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THE QUEEN'S JUSTICE:

A True Story of Indian Village Life.

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BY

SIR EDWIN ARNOLD,

K.C.I.E., C.S.I.,

Author of "The Light of Asia," "The Light of the World," etc., etc., etc.

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00141892

TO MY WIFE

Tama Kurokawa

— LADY ARNOLD —

THIS LITTLE VOLUME IS

AFFECTIONATELY

DEDICATED.

PREFACE.

THIS *is a true relation, in the familiar form of "short story," of a strange case of supposed murder which occurred sixteen years ago in Bengal. The facts, names and circumstances, are all given, with absolute exactness, out of official records, and from a pamphlet published in London during* 1883 *by* MR. MANOMAHAN GHOSE, *with an introduction by* SIR W. A. HUNTER.

It seemed desirable that so typical and picturesque an illustration of the difficulties of Criminal Administration in India, of the dangers of the chose jugée, *and of the scrupulous caution which judges need ever*

to exercise, should have literary preservation; for which reason, as well as for its forensic interest and ethnographic colour, the author has given this new setting to bygone incidents, which are in themselves herein recorded with complete fidelity and simplicity.

EDWIN ARNOLD.

LONDON,
17th Oct., 1898.

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THE QUEEN'S JUSTICE:

A True Story of Indian Village Life.

CHAPTER I.

BEFORE THE TROUBLE.

Evening was falling upon a little village in rural Bengal; the evening of a hot day at the close of the month of March, 1882. Men, women, and children, birds, beasts, lizards, and snakes, and the very fishes in the jheels and streams, were glad of the growing coolness in the air. It would be a whole month yet, and, perhaps, more, before the May rains could fall, to soak the thirsty soil, and set the grasses growing; and permit the áman crop of spring rice to

be sown upon the lowlands. But there was still plenty of daily work to do outside the village of Mouzah Bhulat, what with the gathering in of the Boro rice, which comes to hand during March, on the swampy places; and with the gleaning by the women and children of the wild grain, *jaradhán*, which is planted and ripened for the poor by the special bounty of Krishna and Dargá; and with the pasturing in cool damp spots, of the cattle and goats; and the daily working of the water-wheels, and of the garden wells. But evening, all over India, in bringing purple peace to the sky, and respite from the fierce splendour of the sun, brings also the cows to their calves, the buffaloes to their byres, the she-goats to their bleating kids, the baby to the mother's soft breast, and repose to the world. The people of the village of Mouzah Bhulat were coming home by one

of those jungle roads so common in lower Bengal, where, if one walked or rode for the first time, and had any intelligent eye for nature, the strange and picturesque and interesting objects beheld would fill observant minds with delight. The rich and lavish frondage of the forest—always finding moisture in the thick subsoil, and casting long shadows from groves of palm trees, and thickets of rustling feathery bamboo, intermingled with sal and tamarind, and naked pale branches of the silk-cotton trees, among which long tortuous-twined and festooned like snakes, and pink and blue epiphytes—swung like clustered lamps. The path itself, beaten smooth by many patient feet, without a stone or even a pebble so big as a rice-husk; all of it the sifted and fertile gift of holy Mother Ganges to her lowland children, was like a leafy lane of Paradise.

The nullahs, lined with bushes of erunda, wild indigo, and korinda, were alive with happy jungle creatures, and now most of all, because during March, in Bengal, the palm-swift builds her little purse-like nest in the palmyras; the white and black halcyon—*machi-baug*—"tiger of fishes," hangs over every pool to catch for his mate the "havildar and ten," that most delicious silvery food. The red-throated paraquet has her young ones, so has the green copper-smith and the koel; the red-cheeked bulbul, and the oriole, flitting by in black and gold, and the crow, the jungle-fowl, the kyah partridge, the plovers, and river-fishers, the *shama* robin and the white-backed mynar have all got hidden eggs somewhere, while the turtle-dove tells you confidingly about her own from every thornbush. The green bee-eater darts back to its hole in the clay-bank with a

purple and golden butterfly in his keen bill; and the bush quail scurries frightened from every tuft of grass. A hungry jackal or two slinks from his day-shelter to see if anything eatable be yet about; the owls are mopping and mowing about the little temple walks; and against the green and gilded sky large bands of flying-foxes go clamorously to their nightly supper of fruit.

Pleasant and peaceful was such an Indian evening, as the village people loitered homeward through these sights and scenes, so familiar to their eyes—most of them being of the so-called Musulman caste; for, although "believers," the Mohammedans of Lower Bengal are not like orthodox Islamites, and very few among them could recite the *Kalma*, or Confession of Faith, even to save their souls. They are really little

more than circumcised low-caste Hindus, and frequent the festivals of Krishna and Bhavani as freely as their Hindu neighbours. At all events that was the case with the Bengali Musulmans of the Nuddea District at the time of this true story, if local changes have since arisen not without their religious and political significance. Along the path to the village was at this hour coming a group of tired but happy folks whose chat, with snatches of country songs, gave a finishing charm of contented humanity to the tranquil twilight and secluded scenes. Who could tell that a sudden and sorrowful tragedy was even at that placid hour impending over this little obscure, innocent corner of our huge world, a tragedy that must put the "Queen's Justice" itself to trial, and once more after so many sad illustrations, make plain to all upright judges how hard a

thing it is to decide righteously. Their Koran—though the simple peasants of Mouzah Bhulat are little versed in its Arabic—says truly that "only one Judge is just," and terribly does it teach how at the last day "those who have judged their fellows unjustly shall be hurled to Hell from such a height, that only their falling down shall occupy forty whole years; but of those who have adjudged justly the Angels shall kiss the lips, because they spake for Allah."

Yet this stout good-looking peasant in the yellow turban coming across the nullah, and driving a dove-coloured cow, is not thinking of anything so serious. It is Malek Chand, watchman—*Chaukidar*—as anybody may tell by his belt and head-dress, whose duty it is to go the rounds occasionally of the village at night and to see that all is well and orderly in its neigh-

bourhood. His father was Musulman, as he himself is, and was named Ashruf Sirdar. He is about thirty-five years old: not rich of course, but well respected, and with the reputation of being a kindly man to his fellows, tender and affectionate towards his four children, and faithful, it is to be hoped, to his wife Bharati. But morals are not altogether perfect in these quiet rural nooks of Bengal, and the village at large is inclined to think that the brown eyes and lightsome gait of Sarba, the bold-faced wife of another Musulman villager, Kadam Ali Fakir, have of late tempted him to err. Kadam Ali, her husband, certainly thinks so, for he has taken the first steps in proceedings at law against Malek Chand for improper advances towards Sarba, of which, however, Malek stoutly denies himself guilty; but the charge, rebutted by the Chaukidar, none the less,

perhaps, troubles and perplexes him as he goes, with eyes fixed on the jungle path, forgetting even to guide his cherished cow, and not listening, or certainly not greatly heeding, the lively Bengali song which Nekjan, his ten-year-old daughter, sings at his heels, carrying on her smooth bare brown shoulder the *khatia*, that heavy, yard-long pestle of hard wood, with which the peasants husk their rice, pounding it in a stone mortar. Charming little Nekjan! Dark as a betel-nut and graceful as a roe-deer, the Hindu maid trips along, with small well-formed feet, behind her father, wearing no ornaments except her own natural grace and youth. The household is far too poor for silver bangles and armlets, much more for the gold buckle which ought to fasten her *choli*—only she wears two or three common glass bracelets; and in her jet black hair, which hangs from

her shining little head in a long triple braid over a sari of crimson cotton bordered with bright green, she has set a champak flower, whose star of milky white, with centre of gold, is really all the jewel that it needs. And as she paces in the rear with the *khatia* on her shoulder, which they have borrowed to pestle the new rice, Nekjan's girlish voice lilts a Bengali folk-song, something like this:—

"*Choti Gwalini*—a milkmaid sped,
Slender and bright and brown,
With a chatty of curds on her neat little head
To sell in Nuddea town.
Rama! ho Rama! who buys of me
Curds as white as the ivory?

Jahan dharele—when at noon-tide
She puts down the chatty to rest,
Tahan tamua—up to her side,
In silver and satins dressed.
Rama! ho Rama! canters the king—
'Sweet little milkmaid, marketing!'

Agu, hokh agu! forward go!
Ride on your road, my Lord!
If you lay hand on my sari so
The curds will spatter your sword.
Rama! ho Rama! the curds will fall
On silver and satin and jewels, and all!"

"Baba!" said the girl, presently, "you won't sing to-night.

"I am troubled, *Sontoti!*

"What is it, father? and when the rice and onions are now nearly got, and Dhanbani our cow has calved."

"Heart's delight! my Dilkhoosha! there are those who plot mischief against me. Allah himself cannot make serpents yield honey, nor turn bad natures into good. Sarba, the wife of Kadam Ali Fakir, is one of the bad ones. She lies about me all over the village, as the dust blows."

"Yes, Baba, I know. They talk of her, but who believes?"

"Because I would not listen to her evil words and wishes—albeit thy mother deems otherwise—she hath a false tale that I offered wrong to her in her husband's outgoing, and the Fakir hath gone to Bongong upon it, and laid complaint;—nor shall I

be quit of all these liars without many rupees to them and to the police."

Nekjan said, "I heard Obiran, the wife of Meeru, at the well, not seeing me behind her, tell Jameer's daughter that they would make thee eat dirt, for the suit was against Meeru."

"Yea," replied the Chaukidar, "she is cousin to Sarba. Make the mother know what was said, my little one; it may change her heart, which is foolish and angry against thy father."

"See, Baba!" exclaimed the girl, "there is Sarba coming, with Kadam Ali, and Dwarka Rai, the constable."

A tall handsome peasant woman, with dark bold eyes and coarse voluptuous mouth, was seen approaching, carrying on her shapely head a large black chatty of water. She was conversing earnestly with the village officer and the ill-looking Fakir,

her husband. In the narrow jungle path it was impossible for Malek Chand and the girl not to pass closely. The woman drew her red sari over her face, and spat upon the ground contemptuously. The men cast glances of anger and defiance at each other, and grasped tighter their long latties as though they would have liked to use them. But the constable was there, and father and daughter followed the quiet-pacing cow in an artificial peace, Dwarka Rai only crying after them:

"See that thou hast ready that money by to-morrow night, Malek Chand! The writ is out; we shall lay thee by the heels in Bongong gaol."

Malek could think of nothing better than to call out, "See that you keep Kadam Ali's tongue from lying, and his bull from wandering o' nights in our lane. I shall be doing mischief else to him and his beast!"

Unlucky words! although it was true that night after night the Fakir's bull did indeed roam annoyingly among the cowsheds of Mouzah Bhulat, provoking the wrath of the villagers, who had little of the orthodox Hindu's reverence for horned cattle.

Meantime, Dhanbani, the dove-coloured cow, paced placidly onward to her calf and her fodder; and by the temple of Shiva Umesh Ghazi met them, and exchanged some earnest words with the Chaukidar, in which Nekjan heard Sarba's name pronounced. At the corner of the onion-field, close to the house of the Chaukidar, Golak Mani, the little sister of Nekjan, holding the hand of her mother Bharati, joined the troubled pair. Malek's wife, a hard-featured, middle-aged woman, held an infant across her left hip, and in her right hand, the heavy stone rice mortar. The child Golak, about seven years old, instead of

Nekjan's gentle face and loving eyes, like her father's, had rather the furtive, sullen look of the mother, and answered without affection to the tender caresses of her father, who kissed her head and took her fondly in his arms.

"Thou wouldst be better pleased, I think," Bharati said, bitterly, "if she were Sarba's."

"Vex me no more, wife," Malek replied, angrily, "with foolishness about that den of liars. Nekjan here will tell you the truth. Go in and boil the rice, and then must I send thee this night to Goga to get rupees from my brother, wherewith to fight the wickedness of Kadam Ali Fakir, Mirun, and my other enemies."

As the sorely perplexed but kind-hearted peasant passed into his cottage door, he brushed against the *khatia*, which Nekjan had set down at the door-post. The heavy

wooden pestle, in falling to the ground, struck the green and purple glass bangles upon the wrist of the little Hindu maid, and broke them all.

"Ya, Allah!" exclaimed Bharati, "what ill luck is coming now to our house, I wonder. I will make *shirni* to the Gods, if nothing evil befalls from this."

But pretty Nekjan laid the *khatia* down at the head of the sleeping mat, and, kissing her father's knee to turn the ill omen into good luck, threw away the broken glass and set to work to prepare the pots for cooking.

Then the little humble household, on whom so great a sorrow was about to descend, offered the usual prayers before food to that Invisible Power which oftimes seems not to hear, or not at all to heed. Standing respectfully behind the silent chaukidar, the wife, suppressing her ill

temper for the sake of an hour when all should be domestically sweet and tranquil, brought the hot rice to her lord, saying, "*amar hatai bhat!*" "be pleased to take victuals of my hand," while Malek Chand, somewhat in peace again at the sight of his children, and at the smell of the konji and warm cakes, drew Nekjan and Golak down between his knees, feeding them with rolled morsels of chupatti dipped in the rice-water and rude condiments of the meal. But ever he gave the best pieces to his fond little laughing Nekjan. Afterwards, Bharati partook herself of the simple provisions, and then, after giving the infant the breast, tied up her sari tightly between her knees, and, with the baby still at her bosom, and leading by the hand the younger child, set forth under the sinking moon for the adjoining village of Goga to fetch, if they should be attainable,

those desired rupees. The road was easy and clear of any danger from wolves or tigers, though Malek bade his sullen wife beware of snakes sleeping in the dust. She would rest for the night at her brother-in-law's hut, and return at the bathing hour on the morrow.

The wife being sped, Nekjan spread out, in the little verandah of the Indian cottage, the sleeping mat of plaited palm leaves; for it was too warm a night for lying down within doors. In the hot season all India takes repose in the open air, men, women, and children alike; wrapped, especially about the head and face, in white chudders or blankets of black wool. Malek Chand, with Nekjan and Golak Mani, made ready to take repose together in the gleam of the sinking moon, the Chaukidar having first inspected carefully his cow-byres to see that no wandering bull, or prowling wolf

or hyena, vexed the rest of Dhanbani and her calf. Then he took his place between the two little sleeping girls, and the village —with its lines of recumbent figures placidly stretched upon charpoy and mat in front of the thatched cots; with the soft whisper of the jungle—wind breathing through the lane, and the waving shadows of the palm-tops flickering each patch of moonlight along its vista—seemed to present a finished picture of security and peace. Yet before morning all shall be changed for this troubled peasant, forgetting temporarily his anxieties in slumber, and for the foolish jealous wife on foot over the maiden; and there shall befall that which will bring matters in Mouzah Bhulat "to the three thirteens," and set a great judicial puzzle to the Justice of the Queen, hard to unravel for even the best brains and the most dutiful consciences.

CHAPTER II.

THE CATASTROPHE.

VERY wonderful and beautiful is the break of day in India, and mysterious, especially in that hour when the first faint glimmer of the "Wolf's Tail" brushes the Eastern horizon, and when the *dum-i-subh*, the "breath of the morning" stirs over the awakening earth. By such names the villager knows the earliest indications of returning light, and truly notable is the strange and sudden waft of air, like a sleepless deep-drawn expiration, which abruptly rises and passes, making the palm-fans wave against the sky, and the grasses and

jungle foliage lisp and patter. Then, above all, he thinks, is the time when the leaves of the holy peepul—the tree which knows and hears the doings of men—murmur them all to the wandering Gods, although the passer-by would think they were merely rustling. Then also do the white stars watch earth most closely, and see all the hidden deeds that happen, perceiving even the very deeds and thoughts of men as readily as they mark the tiger finishing his bloody meal in the bamboo thicket, and the jackal slinking home with stolen food to her young. But for human eyes the thickest jungle is not so impenetrable as human hearts: the midnight is not so dark and black as mortal passions; and the best light our earthly equity can command to know the truth from the falsehood, and so to judge righteously, is but like the flicker of yonder fire-flies in the mango

tree above Malek Chand's abode, to the eyes of those sleepless stars.

He is sitting alone on the step of the verandah, his arms folded upon his knees, his bared head buried in them, weeping piteously, and rocking all his body to and fro, as a native does in any extreme misery. The moon has gone down, and the light of dawn is still too faint to disclose any object plainly, but one might see the dim shadows of a pariah dog, which roaming down the street, has heard the bitter cry which breaks from Malek's shrouded lips, and has darted away astonished at a sound strange to its ragged ears. Some among the immediate neighbours, stirring in the light sleep which comes with the approach of morning, have also heard that unusual outburst of agony, followed by sobs and moans as of a strong man in distress or despair. Haru, the old white-haired widow

of Fakir Sirdar, who dwells only two *rushis*, some eighty yards, from the Chaukidar's house, was lighting her lamp to get about early household duties, when that strange wail of sorrow reached her, and made her hasten with the burning *chiragh* towards the sound. Dhiru Bibi, another near neighbour, caught the terror of the man's cry, and what seemed like a loud sobbing, and hurried towards the spot. She indeed was the full sister of Bharati, Malek's wife, and wife, moreover, of Umesh Ghazee, Malek's best friend in the village. Umesh himself had been restless, that eventful and unhappy night, going out of doors betimes, and staying a long while away in the dark, saying he was afraid the kids were loose, and might be carried away by some prowling panther. But now he too leaped from his mat, put on his cloth hastily, and followed Dhiru.

Jameer, Sajan, and Sham Mehtar, all villagers and near neighbours, drew on their sandals, and clapped their turbans on their heads, and sped hurriedly to the house from which came the lamentable appeal. There, lighted by old Haru's lamp, for still it was not by any means broad day-break, they gathered in a knot in front of Malek's hut.

"What ails thee, brother?" asked Dhiru Bibi.

To the astonishment and horror of the villagers the miserable man lifted his streaming eyes from his palms and answered:

"Nekjan is dead! Something has killed Nekjan! Oh, friends! The light of my eyes is gone; Nekjan is dead!"

They followed Haru with her twinkling oil lamp; who stepped nearer to the platform of beaten clay in front of the cot-

tage ; and there on the sleeping-mat they beheld—on one side little Golak sitting as if just aroused from slumber, tears in her half-opened bewildered eyes ; and on the other, under the doorway, pretty tender Nekjan lying stone-dead ! The Indian girl's graceful body was stretched along the mat ; the slender limbs composed, the long tresses still smoothly braided, the purple and yellow sari not greatly disarranged ; but the small hands were tightly clenched, the brown dark eyes were suffused with blood, and from the closely compressed lips and teeth the end of the little tongue protruded. No mark of external injury was visible, except in these particulars, upon the pallid corpse, but Dhiru Bibi, with a village woman's simplicity and directness of action, threw back the cotton garment of the child, and then they all saw a little below the ribs and as nearly

as possible in the middle of the body, a small red hurt, very small indeed and quite bloodless. No blood was on either the *sari* or the sleeping-mat; no weapon lay immediately near; and the edges of the tiny wound were not gaping, as might be expected, but closely adpressed and too trivial, as seemed, to cause death, unless the injury had gone very deep.

"Chaukidar-ji! how did this happen?" All their trembling voices asked it, in one breath.

"I know not, oh, friends!" moaned Malek Chand. "I went forth in the darkness into my onion-field, because I thought I heard the foot-fall of thieves, leaving my two *butchchas* asleep. When I came back I could see that Nekjan had moved away from the mat. I touched her arm to put her back. It was cold! Then I felt her body—all of it was cold and stiff-

ening. I lit my lamp and looked in her face, which was as you now behold; and I called to her, and shook her; but she answered nothing, for she was dead, oh, Allah!—she lay dead! as ye see: my little maid, the comfort of my life. Nekjan who was the life-blood of my heart!"

"Where is Bharati Bibi?" asked Haru.

"She started over night to Goga," Malek answered: "I sent her to fetch money from my brother, for ye know I have enemies—evil sayers—who will take the law against me. Bharati will be back soon. Oh, how shall I tell her that our Nekjan is dead?"

"It is perhaps a snake that has killed the maid," observed Jameer; "but hither comes Uma Charàn Sirkar, the punchayet: let him be asked."

The punchayet, a grave, respectable villager, bent over the tender body and

looked especially at the small wound just over the navel.

"Are there serpents hereabouts?" he enquired.

"Bharati told me there was a cobra oftimes dwelled here," broke in anew Jameer; "and see here be snake-holes under the wall. Let Umesh fetch mattock and basket by-and-by and open the earth hereabouts. If we find the serpent, it is doubtless his deed."

"Aye, it might be," murmured Malek Chand, piteously.

"It might be," solemnly echoed the punchayet, "but I have spied a spear just now in the *kachu* jungle by the cow-path, and yonder in the roof is, I now observe, a *bagi*. See that these weapons be left where they lie. And go thou, as soon as light broadens, my brother, to the police, and thyself report this grievous thing."

With that the sorrowful Chaukidar rose to his trembling feet, saying. "Yes, I will go directly to the Thanna," and the friends and neighbours were thereupon left in the hut with the body ; Golak Mani all this time never having spoken a word—but only sobbing and crying and looking with large bewildered eyes first at her dead sister then at the company. Dhiru Bibi would have taken her away for the morning food to Umesh Ghazi's house, but they all said "Nay, not now ! but let her wait until her mother returns."

On his sad road to the police-station, Malek Chand met an official peon bearing a legal warrant against him. This was in connection with the suit about Sarba—but out of consideration for his present lamentable errand, without mentioning a douceur of four annas, the peon agreed not to execute the writ just yet, and the Chaukidar

passed on with slow paces to the Thanna. There he saw the inspector, Cholan Rahman, a fairly upright man for a Bengali police-officer, to whom Malek Chand related how he had found his daughter, Nekjan, dead, and with what appearances and what mysterious circumstances; further that he did not know how she came by her death, but that there was a tiny hurt upon the girl's belly, which looked as if it might be a snake-bite, and indeed the neighbours all thought and all said that it was a snake bite, and the cause of Nekjan's death, being in a vital spot. "Others," falteringly murmured the Chaukidar, "wonder whether someone among those who hate and slander us, have not contrived this business; Kadam Ali, Fakir, perchance, and Sarba——"

But the inspector cut him short sternly. "No, no!" he exclaimed, "do not make

fire out of this smoke by accusing anybody. I have been your friend, and I think you a good man. If it be true that you know not how your *butchcha* came by her death, say so to all, as you have said to me. I will send my chief constable back with you to make the needful enquiries."

And calling up Ram Das Sircar, the head-constable, the inspector said, "Go and see this man's dead child, and examine the place and the circumstances, and be kind to them. Don't take any money from him; I know they are poor! Go and enquire how this child died, and if it be a case of snake-bite, report accordingly."

But for some reason or other, possibly because there was no money to be taken, the head-constable made over his duty to a dull, covetous fellow, Dwarka Rai, a subordinate officer, who, at his leisure, by-and-by trudged the four koss of country

road between the Thanna and Mouzah Bhulat, and arrived about sunset at Malek's cottage. The unhappy Chaukidar was sitting there by his child's corpse: and Bharati the wife had long before arrived. Painful scenes and words had passed between them, the gist of which was that Bharati had passionately demanded to hear why, having left the two living children in her husband's care, she had found only one alive, whereto the miserable Chaukidar had replied. "I don't know who killed her! I was not at home, what has been done has been done." This was Tuesday, March 28th, and all that day Golak Mani had been fed at neighbouring houses, and Malek's wife had repaired to her mother's hut—Koti's, to talk with her and others, while some said it was a snake bite, and some said it was the deed of *enemies*, and some whispered that it

looked like a cruel secret murder done to incriminate innocent persons.

On Wednesday, March 29th, the steps of rural justice got forward so far that Ram Das Sircar strolled over to the village and once again set Jameer, Sajan, Uma Charan, and other villagers to dig the hut floor up in the search for a snake. Then the inspector came; and dry, official reports were drawn up; and low-caste people were sent to carry forth the corpse for medical examination to Bongong, where the Civil Hospital Assistant dwelled, Dr. Adhar Chandra Chakravarti. This gentleman, upon whom evidently so much depended for the ends of justice, made a post-mortem investigation of the small corpse, identified to him by Dwarka, the constable, as that of Nekjan. In his subsequent examination before the Court, he gave the results of this research, deposing that he found the

mouth shut close, and the tongue protruding, which, with the bloodshot congestion of the eyes, would seem to be signs of strangulation. But he did not suspect strangulation, and "therefore made no examination under the skin to discover if there were marks of pressure there, or elsewhere." The wound, said this very perfunctory native doctor, was sufficient to cause death. It was a gaping wound, a wound visible to anyone observing the corpse. The spear of Malek, that which he would carry at night on his rounds, was subsequently seen by Dr. Chakravarti. Yes! that was a weapon which might have caused such a wound. The child was not quite healthy, her liver was a little enlarged. There was no blood either on the body or the garments. There were signs of slight internal bleeding. A sensitive, nervous child, who might readily collapse to a severe snake-bite! But this was no snake-

bite. The girl had died of the spear thrust in the abdomen.

And here, indeed, subjoined is the doctor's formal report:

POST-MORTEM REPORT. EX. A.

HOUR OF DESPATCH.	HOUR OF EXAMINATION	INFORMATION FURNISHED BY THE POLICE.
29th Mar., 1882, at 10 a.m.	29th Mar., 1882, at 4½ p.m.	Death by snake-bite. Deceased's father could not give any information regarding the death. An incised wound of a triangular form, measuring about one finger, was found on the epigastic region.

CONDITION OF SUBJECT.	WOUNDS.	BRUISES.
Slightly Emaciated.	One punctured wound resembling the character of an incised wound on the epigastric region, measuring one inch long, ¼ inch broad, and about ⅓ inch deep. This wound has penetrated into the convex surface of the left lobe of the liver, about ¼ inch deep; there was also one scratch mark, about two inches long, ¼ inch broad, on left cheek.	None.
Mark of Ligature on neck.	Scalp, skull and vertebræ.	
None.	Scalp nearly decomposed, skull and vertebræ healthy.	Nothing.

Finally as to the hurt, the native doctor deposed "it was a punctured wound on the epigastric region, measuring about one inch long, quarter inch broad, and about half inch deep. This has penetrated into the convex surface of the left lobe of the liver about quarter inch deep. About three ounces of liquid blood were found on the abdominal cavity.

"I am of opinion that the deceased met with her death by the penetrating wound of the abdomen.

"(Sd.) A. C. CHAKRAVARTI,

"Civil Hospital Assistant, Bongong."

The result of this examination, obviously too superficial, but yet resolutely rejecting the theory of snake-bite, came in due course back to the police-station and to the village gossips of Mouzah Bhulat. The first effect, however, was to produce

the immediate arrest of Malek Chand, who had been sent along with the dead body to Bongong. Its next effect was obviously to upset the police theory, which thus far had been that, probably enough, a snake did really kill the girl; and that if the doctor only countenanced this view, affairs might settle down pretty comfortably, while, whatever rupees Malek, the Chaukidar, could scrape together, he would very gladly pay in secret on such a basis to satisfy those, who, in rural India, have too often to be satisfied as well as the law. But just when these subordinate Ministers of Justice, in Bengal, so frequently her worst enemies, were agreeing that the snake would not do any longer, either for themselves or the court, Bharati, Malek's wife, on the Thursday morning following the Tuesday of the murder, in her own house, made a most terrible statement in the presence of

Dwarka, the constable, and of the Punchayet Uma Charan. She declared that Nekjan had been murdered, and that her murderer was her own father. She related how Golak Mani, when at length the little one found a tongue, had told herself first, and afterwards others, including Haru and Dhiru, and the inspector, Bipin Behari, that she—little Golak—in the half-dark of the night, saw her father set his foot upon Nekjan's throat, and strike her with his spear on the body; with many other details. This dreadful declaration had been accepted as true by all listening to it, and even by Bharati herself, who had said on returning to the Chaukidar—"Thou hast slain my child and thine; I will never again cook rice for thee." To which Malek Chand had mournfully replied—*Tomar hatai bhat amara khartai hoeba nai*—"I shall never have again to eat

from your hand." And this awful solution of the mystery being generally adopted, in view of the doctor's report, of the Chaukidar's dismal silence, and of the belief shewn in Golak's tale by her mother and all the neighbours, the police, who had not been without a share in encouraging such tardy revelations of the child, found sufficient explanation of the monstrous crime in the wish of Malek to fix it upon his enemy, Kadam Ali. It was afterwards a part of little Golak's story that while her father was killing Nekjan, he had said—"Lay the blame of this upon the Fakir," and the view became held that he had sent her out into the onion field to avoid questioning, when the neighbours flocked in. This was on Thursday, and in the evening all parties were ordered to the Thanna at Bongong; and the next day, Friday, March 31st, the wretched Chaukidar was formally

committed to trial for murder. Bharati passed her husband on the road, as he walked with pinioned wrists, and called out "Sala!" (a term of deep contempt) "is it true that thou hast confessed thyself the murderer of Nekjan?"

On the way to examination and prison the overwhelmed peasant had rough experiences, which were subsequently revealed, of such rural equity as prevailed among the subordinate official kind in Bengal. In vain had he scraped together sixteen rupees and given them, through Sham Mehtar, to the police. At Potkhali, on the bank of the little stream Ichimati, they made him fetch two rupees more to pay for their breakfast; and when he brought the money, he saw the chief constable examining the wound on the corpse, which had been made visibly larger. When Malek asked who had done

this, a ferryman volunteered to him the information that the constable had been enlarging the hurt with the end of a twig of wild indigo. But upon being threatened with the stick by the police, this honest fellow timorously retracted his words. None the less did the police pursue, with illegal energy, their usual course of making good their latest theory of the crime. It was afterwards known that at this spot they drove date thorns into the quick of Malek's finger-nails and toe-nails to induce him to break his silent but resolute denial of the crime. "You had better confess," said the Daroga. "Your wife and daughter are accusing you, or else, if you did not do this thing, why don't you say that Kadam Ali did it? The conjee is not drawn forth with a straight finger."

Malek answered after the fashion of the Bengali of meeting proverb by proverb.

"The mud will not stick to the pankal-fish," and added:

"I know not if he had to do with or if he had not."

CHAPTER III.

THE FIRST TRIAL.

THUS was it that on May 16th, 1882, at Nuddea Sessions Court, before Judge Dickens, the strange and dubious case of "The Empress *v.* Malek Chand, Chaukidar," committed by the Deputy-Magistrate of Bongong, came to trial. The judge, a just and conscientious gentleman, as indeed are all the high judicial officers of British rule in India, had the reputation, nevertheless, of being opinionated, and overmuch given to fixed ideas.

The case, as will by this time be plainly perceived, was typical of those ever recurring judicial problems in India, where the

strong and righteous administrations of British justice have to cleave their path through a perfect jungle of deceit, reticence and prejudice, towards the growth of which the folly, or obstinacy or despair of the accused person often largely contributes. In English justice itself, if only sufficiently enlightened, the natives of India cherish—to our enduring honour—an absolutely unshakeable belief; but this tale is told in order that the countrymen at home of our faithful Indian officials may realise how peculiar are the difficulties of the Indian Courts, and how fatally easy it is for the best minds presiding in them to go astray.

On that burning hot day at Nuddea, under the waving punkahs—everybody in the court being clad in the lightest garb consistent with propriety—Malek Chand, looking sleek and well—for prison life

under British rule is hygenic—stood between two native constables charged with, "having on the night of March 27th, 1882, murdered his own daughter Nekjan, aged nine years, with a view to bring a false charge of murder against one Kadam Ali Fakir." His Honour being seated, and the jury duly empanneled, an extraordinary spectacle opened the proceedings.

The little child of the prisoner, Golak Mani, a girl of seven years of age, was put upon the platform. Terrified and shy as a captive squirrel, her small bosom pants, and her brown knees tremble. Yet an Indian girl of even this tender age, especially when she well understands what she has to say, is far keener in vigilance and intelligence than any Western girl of such tender years would be. Despite the awful "presence" of the all-powerful judge-sahib, and the terror unspeakable of her

father's eyes fixed upon hers, she clutches her cloth with firm fingers, and steadfastly answers the foreman of the jury, who understands her village speech, and proceeds cleverly to question her about the virtue of truthfulness and the sin of lying. Yes! she comprehended what *pap* is—"sin." The bara daroga—the inspector—has opened her eyes about all that, saying *mitya bola pap hai, satya bola bhala*, "how wicked it is to lie, and how good to speak the truth, and what horrid things will happen now and hereafter to the false-tongued." An incarnation of innocent sincerity and candour, the small maid appears to judge and court, while she lisps out this appalling testimony; her tiny hand being first laid on a copy of the Koran, of which holy volume she understands nothing but the sacredness:

"I remember my sister—my elder sister.

Her name was Nekjan. She is dead. She died on our verandah. It was night. My father killed her.

"This is my father. (Points out prisoner.) I myself saw him do it. He first put his foot on her throat, and afterwards struck her (*mariachilo*) on the body (points to a spot below her own waist) with a spear. My sister did not cry out. I was awake. Something touched my body and woke me. I was in the verandah. I said—"*Baba, maritecho kano?*" ("Father, why are you killing?") He said nothing. I was afraid. It was then not dark. It was *pharsha.* After this my father told me that I was not to tell the *daroga* (police-inspector) if he came, and that I was not to tell my mother when she came back. She had gone the evening before to Goga. My sister Nekjan gave me my meal that night. Next morning Dhiru gave me my

meal. I told Dhiru in the morning, and my mother and Haru. Haru came first to the house very early in the morning, and I told her first, and then Dhiru came and I told her, and told my mother when she came.

"After my father struck my sister I did not go to sleep. My father after that cried, and I cried. After killing my sister, my father went out, and returned some time afterwards. I stayed where I was. I did not think of going out and telling my aunt then. This is the spear—our spear. My father had been sleeping on the same mat (*bichana*) my sister and I were sleeping on, before my sister was killed. When I spoke to Haru first I was in the compound. I was sent to the field by my father on the next day. I did not see the daroga send away the body. I did not see the body taken away. I was sent to

the field early in the morning after my meal.

"My father had treated me more kindly than he treated my sister; but he used not to treat her unkindly.

"I knew my sister was dead, because she did not answer me, and when I tried to rouse her by pulling her body, she did not move."

Let it be here remarked that the Court did not know, as the gentle reader by this time does, that during all the Tuesday and part of Wednesday little Golak had not told this tale to any living soul. In reply to a juryman, she furthermore said—"My father began to cry when he came back in the morning." The prisoner, who was undefended, asked only one question of the small, wide-eyed, fatal witness. It was this—"Golak Mani, who has taught you to speak these lying words?" and not

in a whisper, but clear-spoken and seriously courageous, with candour, came the reply: "No one has taught me, Baba; it is the truth which I have said to the Presence." As she tripped down from the stand, Judge Dickens penned this note:

(The little child gave her evidence intelligently, and in a way which impressed me with the belief that she had witnessed the scene she described, and was not repeating a story learned by rote.)

Ram Das Sirkar came next, the easy-going head-constable of Bongong Thanna deposing that his father's name was Joychand Sirkar, his caste Kayast; his house at Mouzah Sarsa, where he is a head-constable of police. In charge on the 28th March last, he received information of this murder on Tuesday at about half-past three p.m.

The information was given by the ac-

cused. He brought no written information.

To the Court. "It is customary to bring a written information in cases of murder."

Witness took down prisoner's statement in writing correctly. "This is not it." (Note by the judge: The first izahar is not with the record, and I cannot admit secondary evidence of its contents).

"The prisoner after making his statement went home. I followed, and arrived at the village at half-past seven a.m. on the morning of the 29th March. I saw the body of a child. It was lying in the verandah of the house of Malek Chand, the prisoner. The body was then lying on its back—legs and arms straight—on a bichana. No blood-stains anywhere, and the verandah (this in reply to a keen juryman) not at all newly smeared with cow-dung. He saw the wound, small and bloodless.

The prisoner was there, and his wife—but not Golak Mani, and no statement was then made. The accused merely said he could not account for his child's death." In any further details of his testimony Ram Das became vague and perfunctory.

Then before the Court appeared Bharati, wife of the accused, a hard-featured peasant woman of some thirty years, clad in the cotton robe and trousers of a Musulmáni.

Neither she, nor the next witnesses could possibly have been presented for the giving of testimony in an English court; but by Section 157 of the Indian Evidence Act His Honour was well enabled to admit such collateral evidence. Turning only once towards her husband to identify him, as she stepped into her place, she deposed in a quiet pitiless voice:

"I had a daughter named Nekjan—she

is dead. She was between 9 and 10—older than Golak. I have a little son, aged 2½ years, and a sucking baby-boy. The night that Nekjan died I was not in my house. I had gone to Goga. My husband had sent me to Goga the evening before. He first told me to go about mid-day, and I started in the evening about a danda (twenty-four minutes) before sunset. I was told to fetch money from his brother, Gopal, to meet the expenses of a case brought against him by Fakir. I got no money. I returned next day about four danda or so in the morning, the time the cows are taken to the field. I heard cries. My child Golak was crying, and my husband was also crying. I saw the body of Nekjan lying in the verandah. I saw a hole in the body just midway of the abdomen. The wound was not bleeding. It looked dry. I questioned the accused,

saying—'How has this happened?' He said—'I went to look after my onions, and don't know how she was killed.' I said—'I have no quarrel with anyone; who has done this? No one has done it but you.' I did say—'Is this why you sent me to Goga?' He said—'Think about the means of escape.' I then asked the little girl, and she told me, in answer to my questions, that her father had put his foot on the child's neck, and (*mariaphelya*) after she was killed thrust the spear into her."

Here again we are aware, though the Court was not, that, at this juncture mentioned, little Golak had not yet told her tale.

The wife went on: "I believed the girl's statement, and I said to him—'I won't give you rice any more with my own hand;' to which he made the answer—'Tomar

hatai bhat amara khaetai hoeba na. After that I cooked no food for him. I did not notice the spear then. I see this spear. (Produced.) It is my husband's. He has one spear only. This weapon (bagi) is also his. They were usually kept in the thatch of the verandah. The daroga (police-officer) came next day. I did not see the daroga. He asked me no question. He came to the house, but I was in a different verandah from the verandah the corpse was in and I was not brought before the daroga. He did not ask me any question that day. I was first questioned two days afterwards by the other daroga (inspector), and I told him what I have told the Court."

Then, replying to the judges, Bharati said—"I can't say why I did not tell the daroga the first day, and denounce my

* "I shall not have to eat rice from your hands any more."

husband. It was not from fear. I had my children, and I had not seen the act myself, and I was not asked." She thus continued: "I had taken the two youngest children with me to Goga, because the youngest was at the breast, and the elder cried, and I could not leave her alone. There was a case pending against my husband. Fakir had brought that case. He was the complainant, and it was about his wife."

Answering the jury, Bharati further said: "Before this I was on good terms with my husband, and he always treated me kindly." At the close of his notes of Bharati's deposition, the judge made a memorandum as follows: (This witness gave her evidence freely; without any apparent points against her husband, and without any display of animus against him).

The next to testify was Haru, the grey-haired widow, a Mahommedan peasant-woman of fifty, who lived near Malek Chand's hut, and remembered the morning of the murder. "That time," she deposed, "I went to his house. He was crying, and the little girl was crying. It was light, but the sun had not yet risen. I heard no calls, but only moans and sobs. I saw Malek Chand sitting in the verandah, and the little girl near by. I saw Nekjan's body on the mat. I went close and stood and looked at the body. I did not go into the verandah." Then to the Court: "The body was lying on its back. The legs and arms were stretched out, not drawn up. I asked Golak what had happened. She said, 'My father put his foot on her throat, and thrust his spear into her.' My own child then began to cry and I was obliged to leave. I did not question Malek Chand.

I saw the dead girl had a small wound in her belly. I saw no blood about. When Golak told us this, her father got up and threatened her, crying: 'If you say so, I will put my foot on *your* throat.' I saw the daroga come next day. I did not tell him that day, nor until two days afterwards."

Dhiru Bibi followed Haru with the same story. This woman was own sister of Bharati, and wife of Umesh Ghazi, who was the best friend perhaps in the whole village to the prisoner. Yet, strange to say, Umesh Ghazi was never once called to give evidence. Dhiru testified, as is subjoined:

"My father's name is Khoda Bux. I am by caste Mahommedan. My home is at Mouzah Bhulat, where I am living with my husband. I knew Nekjan. Malek Chand, prisoner, was her father. My house

is about one *rushi* (forty yards) off his. I remember her death. It took place about two months ago. Next morning early I heard Malek Chand crying. I went there. Golak was sitting near the corpse. I saw the body of Nekjan in the verandah, but I did not look carefully. I asked the little girl, but she said nothing then. (Note this, because the two women went together). Malek Chand said nothing then. I went back home, and shortly afterwards I called the little girl to my house to take her food. About a *phahar* after sunrise (9 a.m.), I questioned the child, saying: 'You were sleeping with your sister? How did she die?' She said the *Baba* (father) put his foot on her neck and killed her. She did not then mention the spear. I suspected then the father. Her mother was not then at home. She came at bathing time. I did not see her, however, that

day. I did not go near the house that day again. I know nothing more."

To Jury.—"I can't say why the father did such a deed. He treated her well before this."

After Dhiru Bibi succeeded the highly respectable witness Uma Charan Sircar, aged about forty years, who deposed:

"My name is Uma Charan Sircar. My father's name is Bangsidhar Sircar. I am by caste Kopali. My home is at Mouza Bhulat. I am a *punchayet* and cultivator.

"I know the accused. He is the *Chaukidar* (watchman) of my village. I knew Nekjan his daughter. On the 16th *Chaitra* (28th March) last I got some information from Umesh Ghazi, in consequence of which I went to the house of accused. Accused was there. I got to the house about four dandas after sunrise (7 a.m.)

I saw the body of Nekjan in the verandah, covered by cloth. I saw no blood on the cloth or on the mat. I did not go into the verandah. I looked from outside. I questioned Malek Chand as to the wound I saw on the chest above the abdomen. He said he could not say who had caused that wound. I saw this spear lying in the road five or six *haths* from the verandah, and this *bagi* lying close to the blacksmith's shop, four bigahs (160 yards) from the verandah. I asked why the spear and *bagi* were there; he said he did not know, but that both were his. I said 'leave them where they lie, and go and give information to the police.' I gave him no written *ittala*, he went without coming to me for it. I did not see either Golak or the Mother at his house. I suspected the prisoner. He told me people said the little maid died of snake-bite."

After this, they called Dr. Brander, Civil Surgeon of Nuddea, to give the weight of his opinion on the Native medical man's post-mortem report. It seems astounding to a student of the case that this European Doctor did not at once advert to the partial and perfunctory examination of the corpse. But he incontinently accepts "the appearances recorded by the examiner," and finds them consistent with death having been caused by the spear wound. Dr. Brander said: "A wound one inch deep in that spot would puncture the liver, and cause death, if not necessarily immediate death by shock. If a man of the weight of accused placed his foot on the neck of a slight-built child, that might be sufficient to cause death. I should say death was caused immediately by the wound, but there is nothing inconsistent with strangulation and partial suffocation. As a rule

spear wounds do leave a convulsed appearance on the body, but if strangulation had taken place, or were taking place, the body would not have the vital energy to develope the contortions of death caused solely by spear-wound.

"I can explain the absence of blood externally in this way, that if the death was owing to a mixed cause, by suffocation and the thrust, the arterial system would have become partially inactive as the result of the suffocation, and would not have caused the expulsion of blood to a distance, which would have been the case if the spear-wound had been the cause of death. This may also be explained by internal bleeding. The ventricles of the heart are reported empty. Bleeding, therefore, must have supervened. "It may have been internal.

To the Jury.—"If the edges of the wound were gaping, the wound must

have been caused before life was wholly extinct."

Thus science—European science—but at a distance from its object, and with possibly some disinclination to upset the easy-going autopsy of a native colleague !

Next, under authority of Section 346 of the Criminal Procedure Code, the serious judge himself proceeded to question the prisoner. The official report runs thus of the catechism :—

Q. Malek Chand, Chaukidar, son of Ashruf, are you guilty of the charge ?

A. I am not guilty.

Q. Did you make this statement before the deputy magistrates, and is it correct ?

Here the statement made by the prisoner at Bongong, March 31st, was read as follows :

The examination of Malek Chand, Chau-

kidar, aged about thirty-five years, taken before me, Gopal Chandra Mukerji, Deputy-Magistrate 1st class, at Bongong, on the 31st day of March, 1882 :

"My name is Malek Chand, Chaukidar. My father's name is Ashruf Sidar. I am by caste Mahommedan, and my occupation *Chaukidar*. My home is at Mouzah Bhulat."

Q. Did you murder your daughter Nekjan ?

A. No, I did not kill her.

Q. On what date, and when did she die ?

A. Early on Tuesday I went to look after my onion field ; no one was in the house except the two girls ; my wife had gone to Goga on Monday afternoon. On my return from the field I saw my eldest daughter Nekjan lying at a little distance from her bed. I called her, but she did

not answer. I felt her body, but she did not move. When it was daylight. I saw that she had a wound, and was dead, and my daughter Golak Jan was asleep. I began to cry. At four or six *dandas* of the day (8 a.m.) I was going to the *thanna* when I was arrested by a *piada* (peon) on the complaint of Kadam Ali Fakir, who had taken out a warrant against me.

Q. After that, when did you go to the *thanna?*

A. After midday I went to the *thanna* and informed the *daroga* (police-inspector).

Q. How far is the *thanna* from your house?

A. Four or four-and-a-half kos (eight or nine miles).

Q. When did you leave your daughters and go to the field?

A. When there was one prahar of the night remaining (3 a.m.)

Q. Why did you send your wife away from the house ?

A. To obtain money to defray expenses of the cases pending against me.

Q. Is this your spear ?

A. Yes.

Q. Why does it look as if it had been rubbed ?

A. I cannot say, I did not rub it. I did not take it with me to the field. I took my lathi.

Q. When you go to the field or to your watch, do you carry the spear or the lathi ?

A. Sometimes I take the spear, sometimes the lathi.

Q. Whom do you suspect of having killed your daughter ?

A. I did not see anyone killing her, and my suspicion does not fall on anyone. But I have a quarrel with Kadam Ali Fakir and Mirun.

Q. How many spears have you got ?

A. Only this one.

Q. Had your daughter any ornaments on her person ?

A. No.

Resuming its enquiry the Court went on questioning the prisoner as follows :

Q. Why did you send your wife to Goga instead of going there yourself ?

A. Lest the police should find me absent from the village and beat me. Through fear of this I did not go.

Q. Why did you not go during the day ?

A. My people at Goga do not stay at home during the day, but go out to the field, etc., and cannot be found at home until evening, so I did not go by day-light.

Q. You have said that you saw, on your return from the field at night, that

your daughter was lying at some distance from her bed, and that you called the neighbours at daybreak. Why did you not light a lamp as soon as you came and saw, and why did you not immediately call your neighbours instead of keeping quiet?

A. I called out for my neighbours as soon as I saw my child on my return from the field.

Q. Did you tell the *punchayet* of the village and the police at the *thanna* that your daughter had died of snake-bite?

A. Yes. I said that my neighbours say that my child has died of snake-bite.

Q. Will you call any witnesses?

A. Yes, I will.

Q. What will they say?

A. They will say that they said about the snake-bite.

In accordance with this, at the conclu-

sion of the foregoing questions the prisoner called three neighbours as witnesses for the defence, and these men said they knew nothing as to how the child died, but that they had heard a report in the village to the effect that she had died of snake-bite.

So terminated the proceedings. There followed the judge's charge, of which very luminous, conscientious, and extremely able, though entirely mistaken, address, the complete text well merits to be given.

THE JUDGE'S CHARGE TO THE JURY.

"GENTLEMEN OF THE JURY. The prisoner is charged with murdering his own child, a little girl of nine years of age. There is no question of law on which I need detain you. If you find that the prisoner has committed the act with which he stands charged, it will be your duty to return a verdict of guilty of murder under section

302, Penal Code. The question which you, gentlemen, have to try, then, is a question of pure fact: Did the prisoner really kill his daughter, as alleged ?

"The prisoner, in his defence, has relied on the *primâ facie* want of motive: Why should I have killed my daughter ? The motive alleged is, that the prisoner was at enmity with one Kadam 'Ali Fakir, who had brought a criminal charge against him (whether for adultery or taking his wife away is not shown); that criminal proceedings were imminent; and that either to implicate his enemy, or to save himself and stave off further proceedings, he murdered his own child. The motive briefly would, therefore, be partly revenge, partly self-preservation. It is proved beyond doubt that criminal proceedings were impending on the 27th March. Now, the enormity of the offence charged must not

be allowed by you to obscure your judgment in dealing with the evidence as to its commission. Neither should you allow the apparent weakness of the motive, in comparison with the magnitude of the crime to obscure your judgment. The prosecution cannot, of course, be answerable for the former, and with regard to the latter, it is my duty to direct you that the prosecution is not bound to prove the motive. It is sufficient if they prove beyond reasonable doubt that the prisoner committed the act. (A passage from the charge of Campbell, C. J. in Reg. *v.* Palmer, quoted at page 44. *Wills on Evidence*, fourth edition, was also read.) Now, the prosecution have indicated a motive, and have shown that there was pressure of immediate difficulties. He had to meet a serious criminal charge, and had no funds in hand to meet it with. The adequacy of

the motive is no doubt a matter for your consideration. But it is not a point which the prosecution is legally—that is, as a matter of law—bound to prove.

"It lies on the prosecution, firstly, to prove by the medical evidence that the crime of murder was committed, and, secondly, to establish in your minds a reasonable belief, amounting to a moral certainty, that the prisoner committed that crime. It is their duty to prove these two points by the best evidence which the nature of the case admits. If, by the best evidence which the case is capable of, they induce this degree of belief in your minds, such a conviction, that is, as you would each act upon in the gravest affairs of your own lives, you must not hesitate in doing your duty on speculative doubts as to the adequacy of the motive. It is, no doubt, an atrocious and violently improb-

able act for a father to kill his own child. But it is a still more atrocious and violently improbable act for a man's wife and child and neighbours to compass his death by deliberately perjured testimony. You are face to face with two violent improbabilities, one of which, according to the laws of thought, must be true. Either the child is speaking truly or not: if she is, her father is guilty; if she is not, she has been suborned to take away her father's life by deliberate falsehood. And her mother, her aunt and her neighbours have voluntarily joined this conspiracy. Whichever hypothesis you adopt, a shock is given to ordinary experience and ordinary probability, and yet it is absolutely certain that one must be true.

"Atrocity for atrocity, apart from any evidence, you are asked to accept the lesser.

"But you are bound to decide the issue of the prisoner's innocence or guilt on the evidence before you. Leaving, therefore, mere speculation as to conflicting probabilities and the inscrutable mystery of motive, it is your duty to examine the direct evidence in this case, and to see if it is consistent with all the other facts of the case—with medical evidence and with the circumstantial evidence. You must test the truth of the direct evidence, that is, the girl Golak's evidence, in every possible way by these external tests, and you should also test it by the internal touchstone of demeanour. If the way in which the child gave her testimony has impressed you favourably; if you can come to the conclusion that the manner of her narrative was that of an eye witness and not of a child repeating a lesson; if you find her testimony corroborated by

the other witnesses, under Section 157, Evidence Act, and borne out by the medical evidence, and by the circumstances on which the prosecution relies as inculpatory facts—then the direct evidence of the child is legally sufficient for conviction. It is sufficient in law, and, if corroborated to your satisfaction, you should have no hesitation in convicting upon it.

"I say, if corroborated, because though, legally, corroboration is not needed, I could not advise you to accept the evidence of a child of that age unless it was very strongly corroborated. A child of six or seven, especially in this country, is unquestionably of sufficient intelligence to narrate truly and distinctly what she has really seen. The theory for the defence, in fact, tacitly admits that the child is a competent witness, for on that theory she is a perjured

and suborned witness. If she is intellectually capable of giving an absolutely false description of a scene she never witnessed in a manner sufficiently natural and life-like to deceive educated and experienced gentlemen like yourselves, she is, *a fortiori*, capable of describing events of which she was an actual spectator. The theory, then, that she is a tutored witness destroys and cuts away the arguments that she is an incompetent witness. For my own part I have formed, in the course of a somewhat lengthy criminal experience, a very high opinion of the capacity of young children in India to relate vividly what they have actually seen, provided, of course, that the facts are of sufficient importance to impress themselves on their memory. You, gentlemen, however, are sole judges of facts in this case, and you must not take my opinion on this point as a direction on the degree

of weight you should attach to her evidence.

(The evidence of Golak was here read.)

"Having laid this girl's evidence before you, I now propose to go through the other evidence, and to indicate the matter for your decision on the following points:

"(1). Whether the medical evidence supports the girl's testimony on important particulars.

"(2). Whether the rest of the direct oral evidence supports the girl's statements.

"(3). Whether the circumstantial evidence, especially the conduct of the prisoner, corroborates it or not.

(The evidence of Dr. Brander was here read.)

"Now, this evidence, and what you have heard from the native doctor, very distinctly corroborates the girl's story as to

the manner of her sister's death ; that is, the double nature of the means employed, as to what Dr. Brandon calls the mixed character of the death. The absence of blood is a peculiar feature as to which all the witnesses agree. It is, of course, possible that some blood-stains may have been removed by the prisoner before the body was first seen ; but the medical evidence appears to account sufficiently for the absence, by concomitant or antecedent strangulation, coupled with internal bleeding. The position of the body and the position of the wound on the apex of the abdomen point also to internal bleeding. But the absence of blood externally, and the very slight depth of the wound, are, it appears to me, important corroboration of the child's statements. If the child was not killed by the prisoner, the murder must have been committed by an outsider and

an enemy. The child wore no ornaments. An outsider, if intending to murder, and using a spear to effect his purpose, would, in all probability, have struck home, that is, deeply, and withdrawn the spear quickly, in which case there would have been two things: (1) a discharge of blood, and (2) a deeper wound. Whereas, if death were caused really by a heavy man's foot upon the throat, if suffocation had partially or completely supervened, if the spear had been inserted deliberately and slightly, not to kill, but to give a colour to the theory of murder by an outsider, and slowly withdrawn, the admitted circumstances of the absence of blood-stains and the shallowness of the wound are satisfactorily explained. Here, then, in the scientific testimony, which is above suspicion, is a species of corroboration which could not have been foreseen by the concoctors of a fabricated story.

"I now come to the direct oral testimony which is adduced to corroborate the truth of the girl's story.

(Evidence of Haru, Dhiru, and Bharati, was here laid before the jury.)

"These witnesses all agree in saying that the girl told them the same story on the morning of the 28th March, and before the police came near the village.

"If they are speaking the truth, these facts afford the strongest possible corroboration of that story. If the child has been suborned, they also must have been suborned to support her. It is for you to weigh this body of evidence, and to come to a conclusion for yourselves as to whether it is trustworthy. There is a discrepancy between the evidence of Haru and the girl as to the place where the statement was made. The child says it was in the *utan* (yard), the woman says that it

was in the verandah where the child was sitting. But that is very trifling, for the woman, at all events, was in the *utan*, and it does not appear to be a point to which much importance should be attached. I shall have to comment further on the mother's evidence, but for the present I will leave it and come to the third branch of the evidence—the circumstances which the prosecution relies on as inculpatory.

"At first, as to the spear. The spear produced is admitted by the prisoner to be his, and there seems no reason to doubt that the murder, whoever committed it, was committed with that spear. If not, why (on the hypothesis of the prisoner's innocence) was it left lying outside for the *punchayet* to see? Taking it, then, to be the spear or weapon with which the murder was committed, whoever committed it, which theory best accords with ordinary

experience and reasonable probability—the child's story that the supposed murderer used his own spear, or the theory that an outsider used the prisoner's spear? That the night was dark, is an admitted fact. It is proved that the spear was usually kept in the thatch of the verandah, a place where the darkness of the night would be intensified. When a person comes in the darkness of the night to commit a deliberate murder on a neighbour's child, does he come empty handed? Does he not usually come with some instrument—a club, a *dao*, or a spear—to accomplish his design? The theory for the defence would require the outsiders to have come empty-handed, or not to have used the weapon they brought. Again, looking at the fact that the place where the spear was kept was in the thatch, the outsider was either a man familiar with the house or he was not. If *not*, it is ex-

tremely unlikely that he would have found the spear in the dark; if *yes*, it is extremely unlikely that he would have come empty-handed, relying on finding the spear. The prisoner says he usually took the spear when absent at night, and an outsider must, if intending murder, have counted on his absence. As far as it goes, then, the weapon used corroborates the child's story. The prisoner, unquestionably, had the weapon with which death was inflicted, and it is improbable that any outside murderer would have come intending to use that weapon, and unprovided with a weapon of his own. I would not advise you to attach excessive importance to this point if it stood alone, but it is, as far as it goes, corroborative. In coming to a conclusion as to the truth of the girl's evidence—in other words as to the prisoner's guilt or innocence, the conduct of the prisoner

himself becomes an element of the utmost importance—a test, under the peculiar circumstances of the case, of the highest value. What was his conduct before the event? At the time of the event?—after the event? Was it, on the whole, consistent with the conduct of an innocent man in his position? Was it consistent with the conduct of a man against whom, on the hypothesis of innocence, an abominable crime had been committed? These are important questions for you, gentlemen, and on your answers to these questions, it is plain, much will depend. It is for you to decide what answers you will give to these questions, and what effect these answers will have on the conclusion to which you may come on the whole case. I will merely point out the bearing of the evidence on these points.

"What was the conduct of the prisoner

before the event? He sends his wife away the evening before, so as to ensure her absence during the night, for what ostensible purpose? To fetch money (which was not forthcoming) from his brother. The village Goga is within an easy distance—half-an-hour's walk or twenty minutes' run for a strong and tall man like the prisoner. And yet he does not go himself, but sends his wife. You have seen that sending his wife entailed her taking the two youngest children, and disturbing the ordinary household arrangements. You have heard the prisoner's explanation of this act, and it is for you to decide whether it is a sufficient or satisfactory explanation. Such an act, even if altogether unexplained, is not, of course, inconsistent with innocence, and if it stood alone, could not, of course, support a legal inference of guilt. But if, in your opinion,

insufficiently explained, it is a circumstance which adds to the cumulative force of the inculpatory facts—a circumstance corroborative of the theory for the prosecution.

"*Second.*—What was the conduct of the prisoner at the time of the event, *i.e.*, on the night of the murder? (Prisoner's statement before the magistrate read.) He comes home in the dark, he finds his child, on his own showing, dead. He strikes no light. He gives no alarm. He does not (on the hypothesis of innocence) *then* know what is the matter with her. It may be snake-bite; it may be a sudden seizure of illness. What would a man ordinarily do under such circumstances? Would he not get a light, and call his neighbours. The aunt of the girl, the sister of the man's absent wife, is living within hail, yet the prisoner admittedly does not summon her to his help. He

waits till it is light, and then examines, and sees a death-wound on his child's body. Even then he gives no alarm. He calls no one. He begins to wail and weep in such a way that his neighbours then astir hear it and come to enquire. Far be it from me to say that his weeping at seeing his child lying murdered—were he an innocent man—would be improbable or unnatural. But on his own showing, the outburst of sorrow did not come till the break of day, and the question is whether his conduct antecedent to the outburst of sorrow, real or pretended, is compatible with the conduct of an innocent man. The woman Haru swears it was broad daylight when she went. Why up to that time had the prisoner called no one to his help? If time for help was past, why had he called no one to witness the abominable crime, the foul murder that had been

perpetrated in his house? You have seen that in his statement to the magistrate he distinctly said that he came home in the dark, and did not see the wound till the dawn came. He could not, if the statement be true (and it was admittedly made and correctly recorded) have known that help was past. When asked to explain his conduct by me, he sees the importance of the inference, and attempts to contradict his former statement, whether satisfactorily or not is for you to judge.

"*Third.*—What is his conduct after the event? His position compels him to report the death. He knows an enquiry must follow. Does he take proper steps to report the real facts, to place the magnitude of the crime in the true light, to insist on justice being done on the unknown murderer? No, he tries to stifle the inquiry by reporting at the thanna that

the neighbours say it is a case of snake-bite. The written information has unfortunately not been sent up, as it ought to have been. The Deputy-Magistrate and I have accordingly been unable to admit secondary evidence of its contents. But the post-mortem report shows that the case was reported in the first instance as a case of snake-bite, and the prisoner has admitted before you that on going to *thanna* he mentioned that the neighbours said it was a case of snake-bite. He has called three witnesses, telling you that they would prove this statement. Here therefore is no *bonâ-fide* straightforward charge of murder made in the first instance by an outraged parent. An attempt to stifle inquiry is made by a false representation. But it may be asked, does not this at all events, cut away the ground from under the feet of the prosecution? Does

it not clearly shew that the prisoner had no *animus* against Kadam Ali? Does not the alleged motive, the object of the prisoner's alleged act, the foundation of the case fail? At first sight, gentlemen, it does. There is no doubt a complete change of front. But if you examine the evidence carefully, the reason will be apparent. If Haru's evidence be true, the prisoner knew that he could not shut his child's mouth. Before the sun rose, his own child had declared him to be a murderer. His *coup* had failed before the *punchayet* came; he must have felt (if his child's evidence be true and if Haru's evidence be true) that it was hopeless to carry out his intentions—that in attempting to strike down his enemy he would involve himself in ruin, and that his only chance of safety lay in baulking the enquiry. On that hypothesis alone can the

statements to the *punchayet* about a snake-bite—can the statements to the *thanna* about a snake-bite—be explained consistently with either hypothesis? If innocent, and if his child had not denounced him, why persist in such a preposterous explanation, with a ghastly death-wound staring him in the face and giving him the lie? If guilty, and if his child has denounced him, they become explicable. He may have argued that the police, hearing the neighbours say that it was a case of snake-bite, might not have taken the trouble to enquire. When the police did come, and an enquiry became inevitable, did he do what lay in his power to further the enquiry and to bring the murderer to justice? (The evidence of the head constable was here laid before the jury.) On this man's own showing, he made no sort of enquiry into the crime which the evidence of his

own senses must have shewn him had been committed. He examined no one but the mother; the present accused had left the village on the 29th March, the day he arrived, without attempting to make any proper investigation. His explanation is that he was only holding an inquest, and was waiting the native doctor's report before beginning an enquiry. This conduct, however absurd, does not affect the main question before you, one way or the other. It only goes to show that the prisoner did not press an enquiry upon him, and did not produce his daughter, Golak, on the 29th March. That, as far as it goes, if you believe the witness's statements, tends to support the theory for the prosecution, and to corroborate the important statement of the girl that she was sent away to the neighbouring field on the 29th March. That statement, if you believe it, is a

strong inculpatory circumstance, for Golak was the only person who was in the house when the murder was committed, and, on the hypothesis of the prisoner's innocence, should have been produced before the public officer, who had come to the village to make an inquiry.

"That, gentlemen, concludes the case for the prosecution. It is only on the mother's evidence that I can find a single circumstance of importance that appears to throw doubt on the story as told by the prosecution—that circumstance is her omission to denounce her husband to the head constable on the 29th March. This is her explanation of the omission. (Read.) It is for you to weigh that circumstance and the explanation given. It may be that she was on that day unwilling to denounce her husband, or uncertain as to the course she ought to pursue. It may be that she was

unwilling to cut away her means of support. It may be that she was overcome with the fear of her husband, and doubtful of the result of a direct accusation coming from her. She may have felt that she would be unable to substantiate that accusation. She says, "I had not seen the act myself," and she may reasonably have felt that the girl's evidence might be insufficient to bring her husband to justice. Her failure would have exposed her to his revenge and lasting enmity. All these considerations may have been operating in her mind, and have prevented her taking it upon herself to make a formal charge on her own responsibility.

"It is for you to weigh these matters, and to attach what weight you think fit to the circumstance that the prisoner has not rebutted the case made by the prosecution in any way, should you think that the case

is established on the evidence. He has called three neighbours to prove, as he says, that the villagers talked about snake-bite as the cause of death before he went to the *thanna*, and agreed that that was the cause of death. The witnesses called certainly do not prove or bear out that allegation. Even if they did, it is difficult to see how it would tend to prove the innocence of the accused, except on the hypothesis that he is devoid of natural intelligence. Snakes, when they bite, do not make holes in a human being's body, and the wound on this child's person must have been a fact patent to his senses. With these observations, I shall leave this case to you. If the evidence for the prosecution does not satisfy you of the prisoner's guilt, if you have reasonable doubts of the truth of the child's evidence, and the sufficiency of corroboration, you

should acquit the prisoner. If, on the other hand, you find no room for reasonable doubt, if your minds are convinced by the whole evidence that the prisoner committed the act which caused death, you will not be doing your duty as citizens if you shrink from convicting the accused of murder."

Thus the English judge at the first trial! In the light of later knowledge it is at once painful and profitable to study this earnest, anxious, and indisputably upright, but utterly mistaken and erroneous, specimen of judicial analysis. We can see how heavily the apparent facts pressed upon a mind logical and dutiful, but lacking in intellectual elasticity. One can see where the judge's footsteps went unwittingly and unwillingly astray, too easily deceived by the atmosphere of lies which in India clings like an evil mist to both sides alike, and

renders facts undecipherable and theories perilous. It is to enforce upon justice generally the precious lesson of precaution that this judge, this case and this unhappy prisoner are, in the present pages, called back from the forgetfulness of official chronicles.

The jury were unanimous in finding Malek Chand, Chaukidar, guilty of the offences specified in the charge.

The Court directed that, subject to confirmation by the High Court, Malek Chand, Chaukidar, be hanged by the neck till he is dead.

It was late in the afternoon when his Honour passed on the accused the dread sentence of the law. Outside the Court House, on rice field and indigo patch, on palm-grove and gleaming water, fell that purple peace of the Indian evening which was for the Chaukidar only a symbol of

his own forthcoming farewell to the light of day. As the solemn words of the judge were translated for his benefit into the vernacular, Malek Chand rolled his dark eyes round the motley crowd of faces in the Court all turned upon him, seeking, perchance, that poor succour of pity and sympathy for which the stoutest human heart will be hungry in moments of great agony. He found no glances of compassion. Even in the eyes of the least law-abiding Bengali peasant to kill one's own growing daughter showed as a dreadful and devilish crime. Yet Allah knew him an innocent man, most miserable in his very innocence, as he stood there before the English judge and the full Court; and the thoughts of how he had been brought to such a pass, and of how, step by step, all things had gone against him, until his own words and acts became bristling walls

to shut him off from all the paths of life into the dark lane of death; and of how wife and child had turned against him; and not even the wise and eager English judge could see through the fog of falseness to which—oh, Allah pardon!—he had himself contributed—all these black and bitter meditations held him in a kind of daze—while he listened rather to the hungry howls of the pariah dogs outside the maidan, and to the screams of the green paraquets flying to roost than to the concluding accents of his Honour. They had indeed to pluck his cloth in order to make him attend while the sheristadar interrupted the judge's closing words to the effect that if the condemned man wished to appeal to the High Court, he must do so within seven days. But how should he appeal? With what advice? For what object? With what hope? And where could the

necessary funds be found? There are moments of human suffering and of mortal isolation which make even the simplest natures noble. Alone with Allah, with Destiny, and with the terrible English judge, Malek Chand, the Chaukidar, drew himself up to his fine full height and said: "I humbly pray the Presence to order me to be hanged in my own village, because there will be people there who will well know that I die unjustly executed for a crime which I did not commit, and could never have committed."

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CHAPTER IV.

UNDER SENTENCE.

So Malek, the Chaukidar, lay in prison, awaiting his doom, with seven days' grace to make appeal—for in this regard criminal procedure in India is more merciful than our own. In England appeal can only be made to the Home Secretary, who has neither time nor means to go deeply into dubious cases. In India a condemned person can carry his plea for re-consideration or mercy to the High Court, and the lofty fidelity with which that Court discharges its duties has caused all India to regard it with veneration and confidence. A Hindoo, or even a Mohammedan peasant,

would as soon question the judgments of Dharma, or of those Angels of Record, the *Moakkibat*, who sit on the right and left hands of all, registering acts and thoughts, as of the British Supreme Courts.

But the common people understand little of the methods of the law, or of the ways by which to move it, and nobody was particularly anxious at Nuddea, to set apellate machinery in motion for poor, abandoned Malek. As Bharati and her little daughter came forth from the Court-house, someone did indeed say to the wife—

"Bharati Bibi! thou canst make appeal to the Adawlat—if thou wilt. As long as a fish moves his tail, the fisherwoman may ask a good price for him."

"Nay," quoth Haru, "but it would cost much money, and must come to naught. To pay the expense of the drum, would you have me sell the image?"

"Even if it costs money," the first speaker retorted, "you know we say in Bongong, everybody laughed at the widow who kept on her leg ornaments. But truly it costs nothing if the prisoner puts it forth, or his family."

"The Sircar has spoken," muttered Bharati, "and will not speak otherwise."

"Besides," broke in Dhiru, who had bought a new sari in Nuddea, and yellow shoes which she carried on her head, "didst thou move, Malek's wife! in this, it would be to thy bitter hurt with the police."

"Yea, by the Great Mother!" said Ram Das, who was of the party, "the shell-cutter's saw cuts both ways at once. Thou canst not have two sides like that to thy tongue. Moreover, didst thou not offer *shirni*, along with Kadam Ali Fakir at the shrine of the saint, to get what thou hast gotten?"

"Who told thee this?" asked Bharati, angrily.

"All the village knows it, and Sarba too."

"Oh, aye; Sarba!—nay, I am not going back upon what is done. Let him hang! It was written upon his forehead, and is no more than he hath well deserved for ill deeds done."

"Truly," broke in Haru, the old widow, "according to what you eat, you must belch."

With such coarse and careless talk, those who should have been the friends of Malek Chand thus left him to his fate, which would have been a shameful and untimely death for himself and a lasting disgrace for British justice in India but for the keen wit and the honest heart of a native Calcutta lawyer named Manomohan Ghose. This ingenious gentleman, aware

by birth and professional training of all the pitfalls prepared for justice through her own well-meant machinery; aware also of the methods of the police and the untruthfulness of the timid Indian mind, set himself to examine the many points of suspicion and incertitude abounding in the prosecution. These he subsequently embodied in a powerful appeal which he drew up on behalf of the condemned man, and which he delivered with his own lips before the High Court of Calcutta on June 13th, 1882; the Honble. Mr. Justice Wilson and the Honble. Mr. Justice Macpherson presiding.

Mr. Manomohan Ghose, after describing the case which came before the Court for confirmation of the sentence of death, and also upon appeal, frankly confessed its difficulties. The prisoner had been found guilty by the unanimous verdict of a jury,

consisting of his own countrymen, of the atrocious crime of murdering his own child, a girl of tender years, of whom, according to the evidence, he was very fond, and the motive ascribed by the prosecution for this crime, which renders it even more inhuman, was that the prisoner intended to fix the guilt of the crime upon an enemy of his, Kadam Ali Fakir, with whom he had been on bad terms. With the exception of a solitary question put by the prisoner himself, there had, however, been no cross-examination. He had been convicted on the evidence of an eye-witness, no other than his own child, of seven years. The first point Mr. Ghose dwelt upon was the absence of adequate motive for so awful a crime. A prosecution is not, of course, bound to prove motive, but regard must be had to the adequacy and reasonableness of what is suggested, and

Mr. Ghose insisted that very strong evidence was required to warrant the conclusion that a father, confessedly affectionate, would kill his daughter to trump up a charge of murder against an enemy. He argued that the condemned man's conduct negatived such a theory. At which Judge Wilson asked:

"Whom did the prisoner accuse?"

Mr. Ghose replied that he never accused anyone, and never even said that his child had been killed. His statement to the police from the beginning had been: "I don't know how my child died; my neighbours think she died of snake-bite." But the prosecution had suggested that the prisoner must have changed his mind shortly after the murder, and therefore never ventured to charge Kadam Ali Fakir. Why should he have changed his mind if he had killed his daughter for the

sole purpose of accusing the Fakir? But a graver point was this: the judge, in his charge to the jury, had throughout assumed that the case must be one of deliberate murder, and on that hypothesis asked them to adopt one or two alternatives presented to them, either the prisoner murdered the child, or some enemy of his committed the crime. This, Mr. Ghose urged, was a very serious mistake; for the case clearly admitted of another hypothesis, which he asked their lordships to adopt in this case. The judge's charge to the jury was an elaborate, a laboured, and very able effort at persuading them to come to one conclusion, and one conclusion *only* in the case. He had given the jury no chance of avoiding the persuasion at which he had himself arrived, *viz.*, that the prisoner committed the murder. Such a charge must have necessarily prejudiced

the prisoner, and it would entitle him, said Mr. Ghose, to ask their lordships to interfere on the ground of misdirection.

"But," interrupted Judge Wilson, "there is the direct evidence of the prisoner's own child, who was not cross-examined. How are we to disregard that evidence?"

In dealing with the evidence of this child, the pleader called on their lordships to have regard to probabilities, and to remember that the prisoner, an ignorant peasant, would be absolutely incompetent to cross-examine for himself. Indian children are precocious, and notoriously plastic in the hands of those whom they fear or love. The very monstrosity of the fact that child and wife should tell the same story against father and husband should have aroused the liveliest doubt. Besides, observe, urged the skilful Baboo, the delays admitted in the denunciation—delays

just sufficient to afford time for a story arranged to suit the later views of the police. Why was not the head-constable or someone else immediately informed of what the girl had to tell? On the 29th March nothing at all was made known. The prisoner in point of fact was never accused until the result of the post-mortem examination distinctly set aside the theory of a snake-bite. It was common knowledge that in India the police will wait for a medical view, and then adapt their witnesses to that.

"But," interjected Justice Wilson, "how do you account for the death of the child?"

"It was not necessary," the undaunted advocate replied, "for the prisoner to account for it, if he had nothing to do with it."

And then he went on, with the courage of genius, to declare;

"I can put forward a theory which suggested itself to me the moment I read the papers of the case, and which furnishes in my judgment, the real clue to this mystery. Anyone who has any experience of criminal trials in Bengal knows that in the vast majority of cases, probably in more than ninety per cent., neither the prosecution nor the defence discloses the whole truth. There is always, unfortunately, a desperate attempt on both sides to conceal the facts as much as possible, and our courts have therefore the very difficult task imposed upon them of finding, as best they can, the truth out of an immense mass of false and perjured testimony. Bearing this in mind, also remembering that ignorant persons in this country when accused of crimes will not tell the truth, and will set up a false defence even though they are absolutely innocent of any crime,

'I have little hesitation in saying that, after the most anxious consideration of the whole evidence, I have come to the conclusion that this was a case of accidental death."

"Oh, but" cried Judge Wilson, "the medical evidence shows that death was caused by the wound in the abdomen which penetrated the liver."

"I shall ask your lordships," said the barrister, "to reject the medical evidence on that point. I cannot conceive of any such wound having been inflicted during life, and yet not a drop of blood coming out of it. The child's clothes and bedding had no blood on them."

"Then how do you say the accident was caused?" asked the judge.

Pressed for some speculation or another the fearless Ghose responded in a manner which afterwards must have appeared to

many like the absolute inspiration of Truth and Justice themselves. He startled the court and audience by these memorable words:

"Is it altogether unlikely that the prisoner, who was sleeping on the floor of the verandah with his daughters, had occasion to get up during the darkness of the night, and happened to tread on the throat or chest of the deceased? I do not say that this is a satisfactory explanation, but it is a possible one."

Judge Wilson: "But supposing such an accident had killed the child, how do you account for the wound?"

"My Lords, the wound presents no difficulty whatever to me, and it is because I am able to account satisfactorily for the wound that I ask your Lordships to hold that the death of the child must have been due to some accident. Appearing for the

prisoner, it is no doubt a very dangerous suggestion for me to make, but, knowing the character and ideas of these ignorant people in Bengal, I venture to assert that this wound was made after death."

Judge Wilson: "Who made it, and why?"

"It was probably made by the prisoner himself to account for the death of the child; in other words, to fabricate a snake-bite."

Judge Macpherson: "But surely snakes do not make such ugly holes."

"I do not for a moment suggest that the wound was made by a snake. But my theory is that it was made for the purpose of giving it the appearance of a snake-bite."

Judge Macpherson: "Every peasant in Bengal knows what a snake-bite is like. No one would mistake such a terrible wound for a snake-bite."

"My Lords, fortunately for my theory, I have got the very best evidence in support of it. Whether a genuine snake-bite would have such an appearance or not, it is needless for us to inquire, when the fact is admitted that the prisoner himself attempted to pass it off as a snake-bite. He, at any rate, thought it might be taken for a snake-bite. And that is enough for my present purpose."

"That the wound was inflicted after death is perfectly clear from the appearance of it and from the entire absence of blood; and that it was not made by the murderer is also clear from the superficial character of it. Why should any murderer inflict such a gentle wound with a spear, instead of thrusting it deeper? But if it was intended to fabricate a snake-bite, the superficial character of the wound is easily accounted for."

Mr. Ghose then read the judge's charge and commented upon it, and concluded his address by remarking that if, by reason of the enormity of the crime alleged, and the absence of all cross-examination of the witnesses, the Court, after anxiously considering the evidence, could not see its way to acquitting the prisoner altogether, it might adopt another course, which the law allowed and which the judge's summing up entitled the prisoner to ask for, viz., a new trial of the case before a fresh jury.

No one appeared for the Crown in support of the conviction.

The learned judges, after a few days' deliberation, delivered the following judgment:

"We are unable to confirm the conviction and sentence in this case, because the case was presented to the jury by the

learned judge in a manner which seems to us open to grave objection."

The reasons for this just and wise decision are less important than the decision itself. But, as a matter of fact, the Court largely adopted the suggestions of the enlightened Baboo. They noted the fact of the solitary eye-witness, and she so young and manageable; of the utter lack of cross-examination at the trial; and of the one-sidedness of the summing up of Judge Dickens, who, although ruling rightly on the general question of motive, himself had pressed upon the jury a special and artificial motive. And the strong clear judgment thus terminated:

"In the early part of his summing up, Judge Dickens very correctly said that the prosecution had to prove, first, 'that the crime of murder was committed, and to establish in your minds a reasonable belief

amounting to a moral certainty, that the prisoner committed that crime.' But in treating the case in detail, he throughout assumes that a murder was committed, and addresses himself to the question of 'Who committed that?' This involves an assumption not only that the girl died from criminal violence, but that the circumstances were such that the crime amounted to murder. And this is an assumption which we think the judge was not authorised in making.

"Throughout the summing-up, the circumstances adverse to the prisoner were pressed as strongly as possible, while those favourable to him seem to us not to have had due weight given to them.

"The fact that no charge was made against the prisoner for several days after the occurrence is a very important fact. The learned judge refers to it as the 'single

circumstance of importance that appears to throw doubt on the story as told by the prosecution.' He then refers to the wife's explanation, but does not point out that that explanation is contradicted by the police officer. And he then goes on to offer several speculative explanations of her conduct which she herself never suggested. This great diversity in the mode of treating the facts on the one side, and those on the other, seems to us calculated seriously to prejudice the accused.

"One material point of the evidence seems not to have been seriously considered at all. The learned judge throughout his summing-up assumes that death was caused by suffocation and a spear wound. The attention of the jury was not called to the grave doubts arising on the evidence as to what was the real cause of death, and whether the spear-wound was inflicted be-

fore or after death, nor to the bearing of this question upon the whole case."

Consequently these two wise judges ruled:

"We are unable to confirm the conviction and sentence. On the other hand, we do not think we should be justified in allowing the appeal and acquitting the prisoner. The safer course seems to us to be that the prisoner be tried again."

The bold sagacious Baboo Ghose had therefore so far gained a victory for his poor client and for the Queen's Justice, in that Malek Chand, the Chaukidar, was now to have another trial.

But Judge Dickens was, as has been said, an opinionated as well as a high principled man, and having made up his mind privately and officially that the Chaukidar was guilty, not only resented the appeal movement but actually tried to render it

ineffective. He announced the intention of summoning a special jury for the second trial, nominating to it certain persons whose opinions were pretty well conjecturable beforehand. Against this the indefatigable Ghose caused a local pleader to present a petition to Mr. Dickens on behalf of Malek Chand disputing the propriety of the act, and asking for an early trial at special sessions, and that the jurors should be chosen, as usual, by lot. The behaviour of Mr. Dickens on receiving this protest was neither wise nor impartial. "I have already stated," he said, "that two and two make four, and they cannot make me say that two and two make five." On receiving the petition he even displayed temper, exclaiming: "If I am to be harassed by such pleas, and if my discretion as regards the selection of jurors is to be fettered, I will write to the High

Court to transfer the case from my file." But instead of doing this he named a late day for the second hearing in his own court, and selected, apparently quite without ballot, eleven jurymen among whom some were his personal friends. In face of this the indomitable Baboo applied to the Calcutta High Court, with a long affidavit, in the accepted style, having the "crook of Gunesh" on the top, and all the formalities, asking for a rule calling upon Mr. Dickens, Sessions Judge of Nuddea, to show cause why the precept issued by him regarding the selection of certain jurors named by him to sit on the trial of Malek Chand, Chaukidar, should not be quashed, and why the case should not be transferred from the court of Mr. Dickens to that of another judge.

The learned judges, taking action upon this, delivered a judgment, not less sting-

ing to the President of the Nuddea Tribunal for being very careful and dignified in tone, ordaining that a jury should be selected in the customary and equitable way, and that the trial should be transferred from the Court of the "Judge with only one idea" to the Alipur sessions, which step as Judge Macpherson rather ironically remarked, could not fail to be agreeable to Mr. Dickens who had desired the transfer.

CHAPTER V.

THE SECOND TRIAL.

THUS, on the 21st July, 1882, the second trial of Malek Chand, Chaukidar, opened at the Alipur Sessions Court; and lasted for three long, hot, anxious days. But before its commencement, the judicious and indomitable Mr. Ghose, who had generously undertaken to defend the prisoner, paid him a visit in the jail at Nuddea. The superintendent of that jail was the same Dr. Brander whose evidence had especially tended to confirm the native doctor's hasty opinion; but contact with the hapless Chaukidar had greatly influenced the good doctor's mind, and he

was now as eager as the prisoner's own pleader, Baboo Akhay Kamar Mookerji, that Mr. Ghose should personally converse with Malek Chand. These two accordingly accompanied the keen barrister to the neighbourhood of the cell, where Malek sat in chains on the floor, and, an order being given, the sad-eyed Bengali peasant was brought face to face with the one man who had thus far struggled to save him.

It had tried even the patient and silent spirit of an Indian ryot to be kept living for month after month in the very shadow of the gibbet; and at the sudden sight of the open sunshine, and of the countenance of that undaunted champion of justice and truth who had befriended him, Malek Chand fell prostrate at the feet of Manomohan, copiously weeping.

"You have been my father and my

mother!" he cried. "Oh, save my life now! I am entirely innocent!"

Yet, even at that moment of intense emotion, the dogged reticence in which these ignorant peasants wrap up their hearts was not wholly abandoned. They cling to a foolish little early lie, as if it were an entrenchment, and the key of the whole position.

Mr. Ghose said, "But how did your child die? Until you are able to give me some information on this point, it will not be possible for any of us to defend you properly."

Malek went back into the inner darkness of his own spirit, gloomily responding, "I know nothing about it!"

Then ensued the subjoined momentous conversation.

"You must know something; and unless you tell us the truth on this point we can

do nothing; your case is an extremely difficult one."

"I know nothing."

"But, why does your own daughter accuse you of the murder?"

"The police have tutored her, and her statements are false. My wife and daughter have both been saying what they were taught to say."

At this stage, Dr. Brander and the Pleader left the room on Mr. Ghose's request, and the conversation between the prisoner and himself proceeded.

"I am quite convinced in my own mind that you know how your child died, and unless you explain to me the cause of the child's death, I shall find it extremely difficult to defend you at the trial."

"I found my child dead on my return from the field. I don't know how she died. Do as you like, but I know nothing."

"Malek Chand! I believe you did not intentionally kill your child; but I cannot believe you know nothing. If you decline to tell me the truth, you make it almost impossible for me to defend you, and you run the risk of being hanged."

"I know nothing."

"Never mind how your child was killed. I am certain that the wound on her body was inflicted after death, and you must know all about it."

At this the prisoner looked confused and agitated, and caught hold of the feet of his advocate.

"What makes you say the wound was caused after death?"

"I am sure it was."

"Have you heard it from Umesh Ghazee, my brother-in-law?"

"I never heard of him. But what does he know?"

"Well, sir, as you know all about the wound, if you will excuse me, I will tell you everything. That man, Umesh Ghazee, is the cause of all my trouble. He made the wound, and advised me to say that it was a snake-bite. When we discovered that my child Nekjan was dead, and did not know how to account for her death, my brother-in-law, Umesh Ghazee, brought his small knife and made the wound, but no blood came out of it, as the child was then dead."

"What about the spear? Was that never used?"

"No, the spear was never thought of, until the police got my child to accuse me of murder."

"Did not your child accuse you when your wife returned home, and before the police came?"

"All that is utterly untrue. I was not ac-

cused before Thursday night. When Ram Das Jemadar came on Wednesday, he made Umesh Ghazee dig up the floor of my house in the hope of getting the snake. My child Golak was there then, and so was my wife. The inspector subsequently sent for my wife and child, and told them I had myself confessed, and got them to say what he liked. I met my wife one day, as I was being taken to the Magistrate's Court, and she cried out, 'Is it true you have admitted having killed Nekjan?' I replied, 'No, it is all false.'

"I then said, 'I am glad you told me all about the wound. But why did Umesh Ghazee make it so big?'

"It was very slight at first, but it was subsequently enlarged by the police while the corpse was being carried to Bongong. They wanted thirty rupees from me, but I had not so much to give them."

It will thus be seen that when the intrepid Baboo defended the accused at Alipur, at the second trial, he had no information whatever regarding the cause of the child's death, but felt convinced in his own mind that the case was not one of murder, and that the prisoner, probably, had not ventured to disclose the whole truth. However, he had elicited during the interview this most valuable piece of information, which showed that the theory put forward before the High Court was perfectly correct, viz., that the wound on the deceased child had been fabricated after death. Such a point once established, the conclusion became irresistible that the medical evidence in the case could not be depended upon, as it could throw no light whatever on the cause of the child's death. The information regarding the digging of the floor by Umesh Ghazee, under order

of the police, was also of high importance, for this had been suppressed, or hardly noticed at all at the first trial. Armed with so much fresh light and new hope this friend of justice and of poor Malek Chand entered upon the second trial with all the ardour of an expectant conqueror.

It will not be necessary, after what has been revealed, to go step by step over the evidence addressed at Alipur Sessions Court. Dwarka Rai, the constable, was first examined, and vexed the Court by stupidity and feigned ignorance, leaving a strong impression that he and the police had got up Golak's tale. The native doctor, Adhar Chandra Chakravarti, repeated his superficial autopsy, confessing that he had not investigated the condition of the throat or head of the dead girl; but Dr. Brander, without too harshly brushing

aside the views and statements of his subordinate, now declared that the data were not sufficient to decide whether the wound had been inflicted during life or after death. Of this witness, Mr. Ghose asked the crucial question:

"Supposing the child had been bitten by a snake on the abdomen, had died, and that someone very soon after death had enlarged the wound, is there anything in the symptoms inconsistent with this?" and Dr. Brander replied:

"No."

On the second day of the Alipur trial the little child, Golak Mani, was again brought forward and again went through the suspiciously impressive story which she had obviously learned by rote. The judge made experiment as to her moral consciousness by questions, and wrote at the top of his notes: ("This child says

she knows that to tell a lie is *pap*, *i.e.*, sin. She does not, however, understand what *pap* means: yet she is plainly intelligent.")

Then Golak went on:

"My name is Golak Mani. I know the prisoner. He is my father. His name is Malek Chand. I had a sister named Nekjan, a little older than myself. My mother left home in the afternoon, taking a younger sister and an infant brother of mine. My father, Nekjan, and I went to sleep on a mat in the verandah facing the cow-path. She was kicking her feet about when I awoke, and my father had his foot on her throat, and then stuck a spear into her. I said to him: 'Why are you beating her?' He said: 'Lay the blame on the Fakir, Kadam Ali.' My father had an affair of love with this man's wife, Sarba. My sister kicked her legs about, but could not speak. It was a moonlight night. The

moon was setting. It was near dawn. My sister could not move, and I concluded she was dead. After this my father went out. I remained with my sister's body. About dawn my nani, Haru Bebee, the mother of Amrita, came. I told her my father had killed my sister. Dhiru called me to go and eat, and I went to her. She called to me from near a date-tree in the cow-path. I told her what my father had done. When the day was well on, my mother came home. I told her what my father had done. I was at Sham Mehtar's house when my mother returned. I had gone to bathe. I mean I was at home when my mother returned."

Q. Do you know when the police came?

A. I was in the onion field. I am in the habit of looking after the onions, and I went there of my own accord.

I did not see my sister's body taken away.

Q. When did you return from the onion field ?

A. About noon, after the corpse had been taken away.

Cross-examined by Mr. Ghose.—"The barra darogah (chief inspector of police) taught me the word 'pap.' He said—'Mitya bolile pap hai, satya bola bhala.'* He told me this at Bongong. He said to me—'Pap hoile ki hoy ?'† At Nuddea I was told by my mother that my father had been sentenced to be hanged. On that day my mother made an offering at the foot of a sacred tree near the court, and gave me some of the sweetmeats which she offered. I have remained with my mother ever since the case. We have

* "Sin is incurred if one tells a lie."

† "What happens if sin is incurred ?"

not been to visit my father in the jail. When I opened my eyes and saw my father killing my sister, I did not sit up. I watched him, keeping lying down. (Note by the judge—The child is made to show the exact position she kept, and lies down with one hand very slightly raising her head.) I talked to my father in this position. I was still in this position when my father went out. I did not go to sleep, but remained lying down. I did not get up to pass water either before or after the deed. I did not want to. I remember giving evidence before the magistrate at Bongong. I there said that I had awoke because I wished to pass water, but it was a mistake of memory (mane cheela na*). I did tell the magistrate that I was awakened by my sister kicking me. I saw my father take the spear from the roof. It was kept

* "Did not remember."

in a place where you could reach to it with the hand from the bed. The mother of my mother is alive. She is called Koti in the village; and her house is on the other side of the road from ours. (Note by the judge—The child evinces a curious reluctance to answer whether her mother's mother *is* alive, and says at first that she must ask her mother.) I did not call when I saw my sister killed. I did not cry out at all when I saw my sister killed. I wept a little. I did not tell my grandmother, Koti, what I had seen. I never told her. Haru Bebee is my darham nani (called grandmother, but not related). I never told anyone in my village what I had seen except Haru, Dhiru, and my mother. I have playmates in the village. I never told them anything of what had happened. After my father returned, having gone out after the deed, he found me

seated by my sister on the bed, awake. He did not call out to me—"Golak ! get up." He began to cry. He called out loudly—"Oh ! my neighbours ; how is it my Nekjan's dead ?" Dhiru is the wife of Umesh Ghazee, and is sister of my mother. The first person to come on my father's calling out was Haru Bibi."

Q. "What men came ?"

A. "Jameer, Sajan, and Sham Mehtar. They are not related to us. My uncle, Umesh Ghazee, came, looked at the corpse, and went away. (Note by the Judge—The child seems very reluctant to say that this man came.) Umesh and my nani, Koti, live in the same premises. I did not tell him what had happened. I did not tell any one that my father had told me to lay the blame on the fakir. My mother has never asked me why my father killed Nekjan. (Ram Dass, head-

constable, is called in.) This darogah ordered the floor of our house to be dug up, and my uncle, Umesh Ghazee, dug it up with a kodali (spade). My mother was there. I was there. The floor was dug in order to look for the snake which was supposed to have bitten my sister. Every one supposed this. I did not say anything of what I had seen. The darogah did not ask my mother how Nekjan had died. (Dwarka Rai, constable is called in.) This constable took me and my mother into Bongong. We got there at night. I saw the inspector there. (Identifies Inspector Bipin Behari, who is called in.) I was taken to him yesterday evening after I had been in attendance at this Court. I and my mother were taken. The Inspector told me to tell him what I knew, and I related to him what I have said here. I don't know what my mother said to him.

We were taken in one by one. Yesterday week my mother and I were seated under a tree near Bongong, and Kadam Ali Fakir was with us, giving us water. Kadam Ali has come in with us here. He is outside the court."

Re-examined. "I call Koti my nani. She was at home when my sister was killed. She did not come. Her foot was swollen. (Note by the Judge—This explanation is given with much hesitation, and after several unintelligible sentences on the part of the child). The corpse was in the yard (utan) when the floor was dug up."

After Golak, the daughter, the next witness was Bharati the wife; who thus again testifies:

"My name is Bharati. I am the wife of the prisoner at the bar. I had a daughter, Nekjan. She was aged about

nine or ten. I went to Goga to get money, by direction of my husband, on account of a case he had with Kadam Ali Fakir. He told me to go to his brother. His brother said he had none. I went in the afternoon, and returned home next morning about eight or nine. When I came to my house, I found my daughter, Golak, seated on a mat in the verandah, silently weeping, and by her, on the same mat, was the corpse of my daughter, Nekjan. My husband was not there. The corpse was covered with child's clothes, but these were not worn; the body was naked. I saw no blood, but I saw a wound in the abdomen. (Indicates on her own person the locality). My husband came in some time after. When I came and saw my child dead, and the other child by the body, I said to Golak, 'How is it your sister is dead?' She said her father

had killed her sister. She said he had placed his foot on her throat and then speared her. When my husband came in I said to him, 'I left my children with you. You sent me off to Goga for money; now tell me who killed my child.' I further said to him, 'I have no quarrel with anyone; you have a quarrel with the Fakeers.' He said, 'I don't know who killed her; I was not at home.' He further said, 'What has been done has been done; now let us try to save ourselves.' This spear and this bagi (sword) now before me are my husband's."

Cross-examined by Mr. Ghose. "My husband was fond of Nekjan. I did not find my husband crying when I returned. I did not see him cry at all. I did not say to the judge at Nuddea—'I heard cries; my child Golak was crying, and my husband was also crying.' He never cried

(emphatically). I did not tell the judge of Nuddea that 'I first had a conversation with my husband, and that I then asked Golak how her sister had been killed.' What I say now is true. I spoke to Golak first. When I saw my husband, I said to him, 'Golak says you killed Nekjan.' He denied it. I did not ask Golak why her father had killed Nekjan. She did not tell me. I saw my mother, Koti, about noon that day, and I said to her, 'I left two children alive, and found one dead.' She said, 'Well, you will not get the child alive again; probably, the author of its being has killed it.' When I came home I saw the child dead, and I had no idea before I saw the corpse that anything had happened. I found Golak alone by the body. No villager, neighbour, or relation was there. I did not tell anyone in the village what Golak had told me. I told

my mother only. Ram Dass, head-constable, came to our house the next day. He asked me nothing. I told him nothing. This is he. (Identifies Ram Dass, who is called in.) My husband told me to go in when this constable came. (Note by the judge: This she says of her own accord.) I went into another hut of ours. Umesh Ghazee dug the floor of our verandah by order of Ram Dass. I saw from some distance. I heard my husband tell the police that Nekjan had probably died from snake-bite. It was on a Tuesday I returned. On the next Thursday was the first time I told the police my husband had killed Nekjan. I did so to Dwarka, constable, in my house, in the presence of the punchayet, Uma Charan. Dwarka took me and Golak to Bongong. He accompanied us on the road. He also took Jameer, Sajan, and Uma Charan. Dwarka

asked me in my village how my daughter had died, and then I told him her father had killed her. We got to Bongong in the evening. Dwarka was with us. He took us to the inspector (burra darogah) at his house. I had never seen the inspector before. Dwarka kept us at the thanna (police station) that night. Next morning (Friday) my statement was recorded, and Golak's statement was recorded."

Q. "As you were being taken off, after your statement was recorded, did you see your husband in custody? and did you call out to him 'Is it true that you have confessed to the police that you killed your daughter?'"

A. "Yes; I said so. (Note by the judge—The witness afterwards retracts this, but in a very unsatisfactory manner.) I did not say any such thing to my husband, nor did I hear from him that it was

false. The police did not tell me that my husband had made a confession. After my husband was sentenced to death, I did not go to see him. Some one about the Court asked me if I would appeal. I was told that an appeal would not save my husband's life. I therefore took no steps to appeal. The people in the Court told me that an appeal would cost nothing. I made no offering to any god after my husband was convicted. I was not taken to the inspector's house last night. My daughter, Golak, was not taken. She remained with me. If my daughter has said that she and I were taken yesterday, one by one, to the inspector, it is because she is a child. If she has said that I made an offering I cannot explain it. Last Friday week I did not sit under a tree with Kadam Ali, Fákir. He is now staying in the same house with me at Alipur."

Re-examined. "I cannot say why he has come in. His wife has come in."

By Court.—"I was very angry with my husband when I found he had killed my child. I said I would never give him food again, and he said he would never take food from me again. When I saw the police come, and saw that my husband was trying to make them believe that my child had died of snake-bite, I did not come forward and tell the true story, because I was not called ('Amar dak hoe nai'). The wound on the body was long, not triangular. It was wide enough open to admit a finger. I told the Magistrates at Bongong that I suspected my husband had killed Nekjan, in order to bring a charge against Kadam Ali, Fakir. My daughter Golak had told me that when she asked her father why he struck Nekjan, he had said: 'The blame will be round the neck

of Kadam Ali.' I told this both to the magistrate and to the judge of Nuddea."

(Note by the Judge.—No indication of any such statement is to be found either in the record of the committing officer or in that of the judge of Nuddea).

The white-haired widow Haru followed, from whom Mr. Ghose drew in cross-examination these words:

"I am not on friendly terms with prisoner or his family. They have not set up any dharm relationship with me. I did not tell anyone what the child had said to me. When prisoner threatened to strike Golak, he did not say anything. He did not say 'I will put my foot on your throat.'"

Next came Dhiru Bibi, wife of Umesh Ghazee who remembered *now* "that my husband went to the prisoner's house before I did. He returned, and then I went. I did not tell anyone what I had heard

from Golak. I did not tell my husband. My husband slept with me the following night. The common talk in the village was that Nekjan had died from some unknown cause. The day after the event my husband took a kodali (spade) to prisoner's house to dig up the floor. I don't know why. I did hear from my husband that it was to look for the snake that was supposed to have killed Nekjan. I did not then tell him what Golak told me. I did hear prisoner crying before I went." When Dhiru was asked if Umesh Ghazee talked with her about the murder, she fainted and was borne out of court.

The third day was notable, among other things, for the first appearance of Sarba, the good-looking, bold-eyed, wife of Kadam Ali, whose rude beauty was perhaps at the bottom of all the troubles. This Mussul-

mani, a well-formed woman of about twenty-seven years, made solemn affirmation upon a copy of the Koran, and then proceeded to give this evidence:

"My name is Sarba. My home is at Mouzah Bhulat. I know the prisoner. He is Malek Chand. He came to me one night when my husband was away, and I was asleep by myself. He put his hand indecently on my body, and I called out. My mother-in-law came and caught him by the cloth, and he snatched away his clothing from her and ran away. My mother-in-law lit a lamp, and we saw a spear in the verandah where I was sleeping. It was not my husband's, and we supposed that prisoner had left it. My husband laid a complaint against prisoner on account of this."

Cross-examined by Mr. Ghose. "I forget how long before I heard of Nekjan's

death this occurred. It was less than a month. I did not tell the magistrate that my mother-in-law had snatched the spear from prisoner. I forget if I said so. I have a female cousin named Otiran, who is wife of Meeru. Prisoner and Meeru have had a case, which prisoner won. After prisoner had won this case, my husband accused him of the trespass into our house with intent to outrage my virtue."

Whether the charge here made was true or false must be left to conjecture. It was never whispered by husband or wife in the household of the Fakir until after Malek Chand had gained the suit against Meeru. Natives will do strange deeds to revenge a family disappointment like that, or again, the accusation might have been made by the passionate Sarba in revenge for advances upon her side towards the

good-looking prisoner, which had been slighted. Certain it is that all the adverse folks of the village did not want Malek there again ; and, probably, it was through and by them that the heart of Bharati had been first filled with anger and jealousy against her husband. The appearance of Sarba at Alipur was the last blow they could strike at the Chaukidar, but none cross-examined her.

The deposition of Uma Charan Sircar needs not to be repeated, nor that of Ram Das Sircar, jemadar of the police. Under cross-examination the latter testified how, at first seeing the body of Nekjan, "I made prisoner stretch the triangular wound, and I then carefully looked into it, and saw that it had no depth. It looked only skin-deep. I asked the by-standers what they thought was the cause of death, and they all said that they thought it

must be a snake-bite. I asked Uma Charan, and he said the same. Prisoner's wife was there. 'I asked her what she knew. She said, 'I was not there. I cannot say how the child died.' I held a surathal (inquest) and then sent the body in."

Afterwards the three several statements of the prisoner himself was read, and, no witnesses being summoned for the defence, the judge called on the Government Pleader to address the jury. This official was at first disinclined to comply, but, being pressed by the Court, he delivered a brief speech, the burden of which was that he saw no reason why the evidence for the prosecution, especially that of the prisoner's wife and daughter, should not be believed by the jury.

Mr. Manomohan Ghose then addressed the jury, enumerating in masterly fashion the points of the case which absolutely

demanded a reversal of the sentence of the Nuddea Court. He dwelt on the absence of any sufficing motive for the crime: the suggested motive being negatived by the conduct of the prisoner from first to last; on the obviously unsatisfactory character of the medical evidence, which had jumped to a conclusion refuted by the smallness of the wound; on the absence of blood, and the artificial changes wrought in the injury. Step by step he showed how the police had worked up their evidence to support a theory, tutoring the jealous wife and the obedient child, who, before the Court, in the absence of her instructors, had actually hesitated to say whether her grandmother was alive or dead. In conclusion, Mr. Ghose called unhesitatingly for an acquittal, justly observing that the prisoner had not been defended before, and many important facts had not, conse-

quently, been elicited at the previous trial. This case, he said, showed the great danger of relying implicitly on the evidence of little children, and convicting persons on the strength of *post-mortem* reports made by incompetent doctors after careless and perfunctory examination of the body. It also showed how necessary it was to cross-examine the witnesses carefully on points connected with the origin and the first inception of a case, as it was quite clear that for the first three days the witnesses never came out with their present story; and it was not until the Friday morning following the death that the inspector got the prisoner's wife and child to accuse him.

From the luminous and searching charge of Judge Brett, which covered all the ground of this extraordinary case, it is only necessary to select two passages.

Speaking of Golak Nani and her evidence, His Honour remarked "Now, you have seen this little girl, and you will have noticed that she is intelligent. At the outset of her story we are met with a considerable discrepancy between what she says now and what she said before the magistrate. Before the magistrate she said she awoke to answer a call of nature, but here she says her sister kicked her. To the Judge of Nuddea she said something touched her body. She says that what she told the magistrate was a lapse of memory: you will remember the vernacular expression she employed. Apart from other considerations, this is a serious discrepancy; but does it not raise in your minds a suspicion that some one has made the child give an account that would sound better than the first? Again, you will note, and it is of the highest importance,

that in this Court she has added a statement of which not a word was breathed at Bongong or Nuddea, namely, when she questioned her father at the time, he told her to lay the blame on the Fakir. The effect of this is, of course, to make a basis for the story of motive to which I have before alluded, and to which I will again refer. And the prisoner's wife, in answer to some questions which were put to her by myself, says that the child told her that her father had said to her, "The blame will be round the neck of Kadam Ali." Now, do you consider that if the prisoner had really made any such statement, it would only come out at this stage? If he did not, the child must be lying in saying that he did; and if she lies, she must have been taught to lie. Now, in connection with this, I will draw your attention to the following circumstances:

You will remember that this case commenced in this Court on Friday; on that day were examined three witnesses, and on Saturday the first witness in the box was the child; she was in attendance on Friday, and she was asked on Saturday what happened to her on Friday after she was released from attendance. She tells us that she and her mother were taken to the inspector's residence, and there she and her mother were introduced to him separately, and she was made to rehearse her story. Of course, the inference is, from the child's evidence, that the mother was made to do the same. The mother denies this. You will weigh the statements."

Another notable passage in the judge's charge was as follows:

"It has been argued—'Can you believe that a child and a wife can try and bring

a man to the scaffold by giving false evidence?' No doubt it is a violent shock to one's feelings to suppose so. But a very suggestive circumstance has been deposed to in this court by the child. She says that after her father was sentenced to death at Nuddea, her mother made an offering at the foot of a sacred tree near the court, and gave her some of the sweetmeats which she had offered. The mother denies this. You have heard them both, and you will say which you will believe. Further, the woman admits that she never went to see her husband in prison, and that though persons in court told her that she could appeal for nothing, she made no attempt to do so. If you infer from these circumstances the existence of an animus on the part of the wife, not only does the difficulty disappear, but you can readily understand how easily the mother, and

through her the child, could be manipulated."

The jury, after retiring for little more than a minute, returned a unanimous verdict of

"NOT GUILTY!"

in which the judge said he entirely concurred. The prisoner was thereupon acquitted and released!

CHAPTER VI.

ENLIGHTENMENT.

On the night of July 24th, 1882, Malek Chand, the Chaukidar, stepped forth from the dismal shadow of the *hajut*, his prison, a free man; and walked with glad step by the side of his deliverer to the house of Mr. Ghose. To taste the delicious compensations of such a moment, even for one of limited imagination like the Chaukidar, it would be necessary to go through the preceding trials and tribulations of that unhappy man. The commonest objects of the streets through which he paced were all full of a new joy and pleasure to him. He saw with sympathetic eyes, which had

before never realised an interest in them, the flying-foxes trooping merrily across the green and saffron sky to their nocturnal forage in the orchards and gardens; the striped squirrels, that have the marks of Shiva's fingers upon them, finding out a cosy hole for the night; the fluffy palm owls dropping silently from the feathery crowns of the tall palm trees into flight; and the crows going clamorously to roost. He laughed, with fresh taste for every-day life, to hear the dhobie talking softly to his donkey, as it carried home the wash, "Go on, my lord!" "Walk, little joy of my liver!" "Walk, like a lion, for our family honour!" It brought back old peaceful evenings to mark the Hindoo wives setting lamps in the wall-holes and then bowing to the light and touching their foreheads with ashes. And the household folk sitting down to supper; and the barber going

home with a fighting cock under his arm; and the potter finishing off his long day's work with a clay god; and the nautch girls tripping in silks and spangles to the marriage feast; and the bride's kinsmen fetching the bridegroom to her house in a gilded palanquin; and the sleepy buffaloes sauntering through the lane to their stables; and the girls coming in with the last lotas of water. All these and a thousand other familiar sights of the Indian town at twilight brought strange gladness to his spirit. It is so pleasant to be alive, whatever one's humble lot; and so much sweeter for poor Malek Chand—after all his vicissitudes—to be walking, free and cleared, to his preserver's house than to be swinging to the beam of the gallows in Alipur or Nuddea.

Next morning, at the house of Mr. Ghose, a singular interview occurred.

Bharati, the wife, and Golak Mani, the daughter of the Chaukidar, came, trembling and ashamed, to the door of the Pleader's bungalow, and sat out of sight under the shaddock bush, waiting for leave to see him whose life they had so nearly cast away. Malek Chand would not trust himself to come face to face with these drilled liars of his own flesh and blood. "Afterwards, perhaps," he said, "when they have heard the truth from Umesh Ghazee, and made that false woman, Sarba, confess her wickedness, I may endure to look upon them. Let me not see my wife and daughter now, lest I curse them. Wet rice is not made dry by words. Maybe I will seek a divorce. There are others besides her. In the month of Pous even a rat can have seven wives."

So only the Calcutta barrister gave audience to the miserable woman and

weeping child; and what follows here ensued between Mr. Ghose and the disconsolate pair:—"Golak, who killed your sister?" No answer from the small, abashed, tearful child, tearing convulsively at the fringe of her *sari*, and shifting from one little brown foot to the other!

The question was repeated, and then the girl burst forth with a sob, "I don't know!"

"Did you not see your father kill her?"

"No! I was asleep; and I know nothing."

"But you said in Court, only the other day, that you saw your father kill her."

Golak Mani exploded in a paroxysm of childish distress. Her small body shook from head to heels. She put her hands over her streaming eyes and gasped out,

"I was told to say all that. It was lies."

"Who taught you?"

"Dwarka, the constable, showed me a sword and said, 'If you do not say that your father killed your sister with his spear, I will cut off your head with this sword; but if you say that in Court, your father will be set at liberty, and will come back home to you.' And so—so—so, I said all that they told me."

"But what made you say it still, even after you heard that your father was going to be hanged?"

"My mother and the *darogha* (police inspector) said that I must go on saying what I had said before, or else I should be punished."

While the child was speaking, the mother, Bharati, standing by, hung down her head, not uttering one word even when

she was questioned. Finally she went away, never having seen her husband after his release.

Not yet, however, was the full secret of Nekjan's death divulged to any living soul, being, indeed only shared in by two —Umesh Ghazee, husband of Dhiru Bibi, and the Chaukidar himself. The last enlightening word of this strange story came forth, two or three days subsequently, when, before bidding the rescued man farewell, Mr. Manomohan Ghose took him apart and held with him this closing conversation:

"Malek Chand," said Mr. Ghose, "you know that you are acquitted, and that even if you are guilty you cannot now be punished. You have nothing to fear. Tell me truly how your child died."

With tears in his eyes, catching hold of the Baboo's feet—Malek Chand cried

bitterly, "You have saved my life, and I would not deceive you on any account. I am the most miserable creature on earth, and I ought to have been hanged. It would have been better for me."

"What! Did you, then, kill your child?"

"You have every right to call me the murderer of my daughter, though I would have gladly given my own life to save her's."

"Tell me the whole truth without any fear."

Malek Chand then, bitterly weeping, made the following statement to his benefactor:

"On Monday night I was sleeping in my verandah with my two daughters. My wife had gone away to bring some money from my brother. I have some vegetables growing in my yard below my verandah,

and opposite to it is my cowshed, where I keep a cow. There was a stray bull in our village, which gave me much trouble. It used to come almost every night to my house and cause mischief. In order to drive the animal away, I used to keep near my pillow a khatia (the pole of a husking machine, a heavy piece of wood, about a yard in length, and about 14 to 18 inches in circumference), and whenever the animal came, I used to run after it with that khatia. On Monday night it was dark and cloudy, and I fancy it was about 2 a.m. when I heard, while sleeping, some footsteps, which I imagined to be those of the bull, just below my verandah, and opposite my cowshed. Believing the animal had come again, and without going up to it, I threw my khatia with great force towards the spot where I imagined the bull was standing. I immediately heard the sound,

'Oh, Allah!' and recognising the voice of my darling child (Bachcha was the word used), I felt convinced that she had been hit. She had quietly gone down in the dark without my knowledge. I at once rushed out and lifted her up in my arms, but found she was gasping and unable to speak. The khatia had hit her on the back, just below the neck, but the mark of the blow was not noticed by the police and the villagers. I lighted a lamp and saw that my child was dead, and that blood was coming out of her mouth and nostrils. My first impulse was to throw myself into a well, or the river, and commit suicide, and with that intention I went a few paces; but I changed my mind and thought I had better consult my brother-in-law, Umesh Ghazee, who was sleeping in an adjoining house. I called him and told him what had happened. He said: 'What have you

done ? The police will come to-morrow morning, tie your hands, and get you imprisoned for ten years.' I asked him his advice, and he first suggested that I should give out that the bull had killed the child, but I declined to accept that suggestion, as I knew that some men of our village in a recent case had set up the defence that a young man who had complained of certain injuries had been gored by a bull, but this defence was not believed, and the accused were convicted. Umesh Ghazee then suggested that I might accuse the Fakirs, who were at enmity with me, but this I declined to do. He then said: 'Your best plan is to say that your daughter died of snake-bite.' To which I replied: 'But there is no mark of any bite.' 'That is easily done,' said he; 'let me go and fetch my small knife with which I cut mangoes, and let us make a bite.' Saying this, he went

to his room and brought his knife, and said: 'You make a snake-bite with this.' I said: 'I will not lay violent hands on my dead child; you do as you think best.' Thereupon Umesh Ghazee made a slight wound in the belly. I asked: 'Why have you chosen that part of the body?' He replied: 'If the snake had bitten the child in the foot or in the hand, how is it she did not wake up? But if she was bitten in the stomach, she must have become unconscious instantly.'* He then said: 'Now go in the direction of your onion field, and on your return, after a while, call us all and say that your child has died of a snake-bite.' I acted according to this advice, and roused all my neighbours, early on Tuesday morning. They all came and examined the body, and imag-

* It is popularly believed that a snake-bite in a vital part of the body causes instant insensibility.

ined Nekjan had died of snake-bite. I left for the thanna (police station) before my wife returned, and met there Inspector Golam Rahman, who knew me well, and had been very kind to me. I told him privately that I had come to report the death of my child; that I did not know how she died at night; and that some of my neighbours said she died of snake-bite, while others said my enemies, the Fakirs, might have killed her. He then advised me on no account to accuse anyone, but simply to state that I did not know how the child died. He said he was about to go away on leave that day, but he would direct his head-constable to be kind to me. He then sent for Ram Das Sircar, head-constable, and said: 'Go and see this man's child, and be kind to him. Don't take any money from him. I know he is poor. Go and enquire how this child died,

and if it is a case of snake-bite, report accordingly.'"

"After recording my statement, the head-constable left the station, but Dwarik constable preceded him, and the head-constable came the next morning (Wednesday). After causing my floor to be dug up and examining my neighbours, the head-constable sent the corpse in charge of Dwarik constable and some villagers, and I went with them. Before starting, Sham Mehtar and other neighbours told me that if I gave a few rupees to the police there would be no further trouble. I offered Rs.6, but the police wanted Rs.30. At last I borrowed Rs.16, which Sham Mehtar took from me to give the police. When taking the corpse to Bongong, we halted on the banks of the Ichamati, at a place called Potkhali, where Dwarik constable told me—'You, sala! pay for our break-

fast; you have given me nothing, and unless you pay you will get into trouble.' I said I had already paid Rs.16. Dwarik said he had not got it, and that I must go and get some money. From Potkhali I went back and brought a couple of rupees. On my return, I saw the constable sitting by the side of the corpse examining the wound, which I saw had increased in size. I asked—'Who has done this?' The ferryman who was there said that the constable had been putting the stump of an indigo plant into the wound. On hearing this, the constable got angry and threatened to beat the ferryman, saying—'Sala! can you say you have seen me do it?' The ferryman got frightened and said he had not seen it.

"After the examination of the body by the doctor, the police arrested me at Bongong, and sent for my wife and daughter.

In the lock-up at night I was beaten by the constables and told to confess. They brought date-thorns and pierced them into the quick of my nails (showing four or five fingers with nails injured). The inspector, accompanied by another darogha whom I don't know, came and said—'You better confess. Your daughter and wife are accusing you.' In spite of the torture, I declined to say anything. The constables then said—'If you did not do it, why do you not accuse Kadam Ali, Fakir?' I declined to accuse him."

Q. What made you conceal the truth at the beginning? If you had come out with the truth at once, nothing would have happened to you.

A. I am an ignorant man, and I thought no one would believe me, and that the police would accuse me of murder even if I told the truth.

Q. But what made you conceal all this when I pressed you in jail to tell me the truth ?

A. I then thought you would decline to defend me if I told the truth. Sir, I ask your forgiveness for it. (Saying this, Malek began again to weep.)

Q. How do you account for the conduct of your wife ? Is there any reason why she should have wished to get you hanged ?

A. I have no reason to suspect she is unfaithful to me, but she is very jealous, and suspected me of undue familiarity with the wife of Kadam Ali, Fakir. On returning home and finding the child dead, she said to me—"I know you want to live with the Fakir's wife, and that is why you have done this. I will not give you rice any more." I said—"I shall not have to eat rice cooked by you any more."

Q. Did you tell her on her return what had happened ?

A. I told no one except Umesh Ghazee. He might have told his wife Dhiru. My daughter Golak was asleep till daylight, and saw nothing. Dhiru, Haru, and my wife gave false evidence through fear of the police.

Q. Can you explain the conduct of your wife in offering shirni when you were sentenced to death ?

A. The villagers all told her that she herself would get into trouble if the charge against me failed, and she says the offering was by Kadam Ali, Fakir, at whose request she joined in it.

Then, and not till then, the truth came out, confirmed afterwards by the statements of Umesh Ghazee ; and thus an innocent man escaped from the toils of the native police, and the dangers of his own

timidity and untruthfulness; and the Queen's Justice in India was also saved, by the acumen and fidelity of a Calcutta lawyer, from a stain which would have been indelible.

THE END.

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